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CAUSE NO. 12,764

THE STATE OF TEXAS

VS.

BILLY JOE WARDLOW

§ IN THE DISTRICT COURT OF
§
§ TITUS COUNTY, TEXAS
§
§ 76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

October 25, 1994

VOLUME 12 of 43 volumes

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

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STATEMENT OF FACTS

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October 25, 1994

VOLUME 12 of 43 volumes

Before Honorable Gary R. Stephens

Judge by Judicial Assignment

(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

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1 On the 25th day of October, 1994, the
2 above-entitled and numbered cause came on for hearing
3 before said Honorable Court, Judge Gary R. Stephens of
4 Midlothian, Texas, serving by judicial assignment in the
5 District Court of Titus County, Texas, on change of venue
6 from Morris County, Texas, and the following proceedings
7 were had:

8
9 NOLA JEAN LITTLES, Potential Juror #462,
10 was recalled as a Potential Juror and, having been
11 previously sworn by the Court, testified further as
12 follows:

13 THE COURT: Good morning, Ms.
14 Littles, how are you doing?

15 THE POTENTIAL JUROR: Fine,
16 thank you.

17 THE COURT: Go ahead and take
18 a seat, please, ma'am.

19 I know I introduced everyone yesterday
20 but let's do it again; I am Gary Stephens, I'm presiding
21 over the trial, we have two lawyers representing the
22 State of Texas, the District Attorney from Morris County,
23 Mr. Richard Townsend and the soon to be District Attorney
24 from Cass County, Mr. Randall Lee.

25 We have two Defense Attorneys, only

1 one is present with us today and that is Mr. Bird Old,
2 III.

3 Next to Mr. Old is the Defendant Billy
4 Wardlow.

5 Now, ma'am, yesterday I talked to you
6 briefly about your questionnaire.

7 You are now here for the lawyers to
8 discuss with you the principles of law involved in a
9 capital murder trial. You will be asked a lot of
10 questions and the answers will let us know whether or not
11 to put you on this case as a juror.

12 In order to be a juror you have to
13 understand and follow the law but you don't necessarily
14 have to agree with the law, you know, it's like filing
15 taxes, we may not agree with filing taxes but if we do
16 it then we are complying with the law and that's the same
17 thing on some of these issues, you may not necessarily
18 agree with them but if you can truly follow the law and
19 set aside a disagreement you might have then you are
20 qualified but if you disagree to such an extent you can't
21 follow the law then you are not.

22 We are going to talk about these issues
23 and find out where you stand but, ma'am, we have also
24 found out over the years of talking to jurors on cases
25 like this even though jurors understand the law that

1 doesn't necessarily mean that they are appropriate jurors
2 for a death penalty case. That's why I asked you about
3 your feelings about the moral dilemma of doing what might
4 result in the execution of another human being.

5 So we need to know more about you, how
6 you feel and that's why we are going to ask all these
7 probing questions and what you can do to help us is just
8 be as open and honest as you can. There's no right or
9 wrong answers, they are just answers and opinions.
10 That's what we want you to share with us and maybe they
11 will help us to tell whether to take you or not take you
12 on the jury.

13 But we cannot really tell you today
14 whether you are on the jury, we will make that decision,
15 we will go through a group of jurors then make that
16 decision in a week or two.

17 If we don't tell you you are -- excuse
18 me -- if we don't excuse you today then we will notify
19 you in a week or two about whether you are on the
20 jury.

21 Do you have any questions?

22 THE POTENTIAL JUROR: No.

23 THE COURT: Mr. Townsend.
24
25

VOIR DIRE EXAMINATION

BY MR. TOWNSEND

Q Ms. Littles, I'm Richard Townsend, like I say we are going to talk to you about some areas of the law, we just want to know how you feel about it. There's really no right or wrong answers to any of these questions but I do want to make it clear to you from the outset so that there is no mistake, that this table here represents the State of Texas and the citizens of Morris County in this case, we are clearly seeking the death penalty in this case. We are wanting this Defendant executed on what we have alleged to be his crime.

And I know that sounds harsh but that's what we are doing and that's what we are here for.

And you know, one of the great things about our country is that we have the right to disagree about certain things, about just about anything really but we certainly have the right, you and I have the right to disagree about the death penalty, we have the right to disagree about any other area or law that we might disagree about, that's one of the freedoms that we have, that we are very fortunate to have in this country, that we all don't have to think the same thing.

And you know, Ms. Littles, I read your

1 questionnaire and I see that you basically have said that
2 you don't believe in the death penalty, you have said
3 that you do not feel comfortable taking a life, you have
4 said that you have religious, you have moral religious
5 or personal feelings, beliefs that would prevent you from
6 returning a verdict that would ultimately result in the
7 execution of another human being.

8 Am I correct in that you said those
9 things?

10 A Yes.

11 Q Okay. One of the things about the law is that
12 certainly we are not always in agreement with what the
13 law is, we are not always going to agree with what the
14 law is but you know a lot of people go to jury service
15 and they think, well, in order to be a good citizen I
16 have got to go along with the law, I have got to go along
17 with whatever the law is even if it's something that I
18 don't believe in.

19 That's not necessarily true. That's not
20 really true at all. You know, we all have the right to
21 our own personal points of view and the law does not
22 require you or me or anyone else to throw out our
23 religious belief, our moral belief, our personal belief
24 to serve on a jury and different people may be qualified
25 jurors in different kinds of cases, you know.

1 I know from what the Judge asked you
2 yesterday that you felt like there was some cases where
3 the death penalty wasn't involved that you could serve
4 as a juror, is that right?

5 A That's right.

6 Q But then you said that if the death penalty was
7 involved that is where you would have a problem?

8 A That's right. Unless the crime was so vicious,
9 there is always an exception.

10 Q There's an exception?

11 You know when you talk about people that
12 serve on juries some people might be able to serve on
13 burglary juries then another person may feel like they
14 couldn't fairly serve and be fair on a burglary, maybe
15 because their house had been burglarized and they would
16 be particularly mad at somebody that committed burglary
17 or something like that.

18 So what we are seeking is a fair trial
19 for the Defendant and a fair trial for the State and we
20 need 12 jurors who can be fair and impartial regarding
21 a lot of different things and including the death
22 penalty.

23 When you filled our your questionnaire
24 are your feelings today about the death penalty pretty
25 much the same as they were two weeks ago when you filled

1 that questionnaire?

2 A Yes.

3 Q You indicated that you had a moral, religious
4 or personal belief that prevents you from rendering a
5 verdict that would ultimately result in the execution of
6 the death penalty.

7 Is that a belief that you have held for
8 a substantial period of time or something that you --

9 A All my adult life.

10 Q All your life?

11 A Yes.

12 Q So all your life you have felt like that that
13 is something that you could not do?

14 A Yes.

15 Q Okay. I don't mean to be personal, Ms.
16 Littles, but I need to ask you; is this a moral belief
17 or religious belief or --

18 A It's more a moral belief than anything else.

19 Q Just a moral belief?

20 And a moral belief, you know, is
21 something like I said, if you serve on a jury, you know,
22 you have already shown yourself to be a good citizen by
23 showing up here for jury duty and letting us ask you all
24 these questions and all that stuff. You are not required
25 to throw away your moral belief in order to serve on a

1 particular type of jury, do you understand that?

2 A Yes.

3 Q Let me talk to you a little bit about the way
4 capital murder works in Texas; you will be on the jury
5 and the first thing you will be required to decide is the
6 guilt or innocence of the defendant.

7 Now, at that time you won't be deciding
8 whether the defendant would receive the death penalty or
9 not, you would just be deciding whether he was guilty of
10 the crime or not.

11 The death penalty decision would be one
12 that you would make later.

13 Do you think you could sit on a jury
14 where the death penalty was involved when it came to the
15 part of the trial where you would be deciding whether the
16 person was guilty or not guilty or would the fact that
17 the death penalty was in the background there bother you
18 so much that you wouldn't be able to do that?

19 A You mean decide whether he was guilty or not?

20 Q Just deciding.

21 A By the evidence if I was convinced he was
22 guilty I would say he was guilty.

23 Q Okay. So you wouldn't have a problem with
24 guilt and innocence?

25 A No.

1 Q Then in a capital murder trial if the defendant
2 is found guilty then you proceed into what is called "the
3 punishment phase", you will hear some more evidence and
4 at the end of that evidence you will be required to
5 answer two questions and in answering those two questions
6 you will know ahead of time that if those questions are
7 answered in a certain way that the defendant will receive
8 the death penalty.

9 Ma'am, I believe there is a sheet of
10 paper up there on the top, it looks kind of like this,
11 on the top it says "Special Issues." (Indicating)

12 A Yes, sir.

13 Q Read that Special Issue #1 there for me and
14 then I will talk to you about it.

15 Okay. Ms. Littles, is that first
16 Special Issue number there -- to me describes or
17 basically talks about the future or the probability of
18 the defendant being dangerous in the future, is that kind
19 of the way it reads to you?

20 A Yes. It is.

21 Q Okay. That's the first Special Issue.

22 If the defendant had been found guilty
23 then you would vote on that first Special Issue, if the
24 vote was "No" then the defendant would get a life
25 sentence, if the vote was "Yes" the defendant would

1 receive the death penalty -- excuse me, that's not right,
2 if the vote was "Yes" then we would go to that second
3 Special Issue and -- make sure I'm clear on that; if you
4 vote "No" on that first special issue the defendant would
5 receive a life sentence, you wouldn't even consider the
6 second special issue but if you vote "Yes" on that then
7 you are going to consider that second special issue.

8 So, you see, when you get to Special
9 Issue #1 that you are getting closer to giving somebody
10 the death penalty.

11 Would you be able to do that knowing
12 what the result of your answer might be?

13 A It would depend on the information I had gained
14 in the trial of how -- if I decided he was guilty or have
15 -- how vicious his crime was, you know.

16 Q If you felt like it was appropriate?

17 A If I felt like it was appropriate I could.

18 Q You could answer that Special Issue #1 "Yes"
19 if you felt it was appropriate?

20 A Yes.

21 Q Okay. Then, Ms. Littles, it comes down to
22 Special Issue #2.

23 And Special Issue #2, if you will just
24 read Special Issue #2 then we will talk about it, I'm
25 sorry.

1 Okay, ma'am. That Special Issue #2
2 whereas on the guilt or innocence part we have to prove
3 our case beyond a reasonable doubt and then whereas also
4 on Special Issue #1 the State has to prove it beyond a
5 reasonable doubt, Special Issue #2 is not an issue that
6 we have to prove beyond a reasonable doubt, it's just
7 kind of up to your opinion. And Special Issue #2
8 basically says, you know, you have decided that the
9 defendant is guilty, you have already decided he's
10 probably dangerous in the future but is there something
11 in this case, something in the evidence you have heard
12 that makes you feel as if the defendant deserves a life
13 sentence rather than the death penalty?

14 So if you answered that question "Yes"
15 then what you are saying is, "Yes, I believe there is
16 something there and he should receive a life sentence",
17 if you answered that question "No" you are saying, "No,
18 I don't find anything in the evidence that makes me feel
19 that he should not receive the death penalty."

20 And you are going to know what the
21 result of your answers are, Ms. Littles, so when you get
22 to that Special Issue #2 you are going to know by that
23 time if you and the other jurors answer that question,
24 "No" this man is going to be executed.

25 My question to you is; you have made it

1 plain to us that you don't believe -- and, ma'am, we are
2 not trying to put you on the spot, we are not trying to
3 get you to say something you don't believe in or believe
4 but you have told us that you have a moral belief that
5 would prevent you from returning a verdict that would
6 result in the execution of another person and you have
7 told us that you do not feel comfortable taking a life,
8 my question to you is; when you get to Special Issue #2,
9 you know if you answer "No" to that that's exactly what
10 you are doing?

11 A It would be hard.

12 Q I am asking you.

13 A I don't know how I would answer it until I
14 heard evidence but it would be hard for me to do.

15 Q Well, ma'am, things that we need to know when
16 we are trying to select the jury is not whether it's hard
17 or not because we know it's hard.

18 A Yes.

19 Q We need to know either you can do it or you
20 can't and I need to know now.

21 Can you do it?

22 A If the -- sufficient -- if the evidence was
23 sufficient, yes, I could do it.

24 Q You could do it?

25 A It wouldn't be easy.

1 MR. TOWNSEND: No, ma'am. I
2 know it wouldn't be.

3 Pass the witness.

4 THE COURT: Mr. Old?

5
6 VOIR DIRE EXAMINATION

7 BY MR. OLD

8
9 Q Thank you, Your Honor.

10 Ms. Littles, from what you are telling
11 me about a capital case and your answer on your
12 questionnaire, you have answered that if the fact
13 justified there at first, there are circumstances that
14 you could conceive of to where you could answer those
15 questions to the effect that they result in a death
16 sentence?

17 A Yes, sir.

18 Q The duty of a juror is at the outset in the
19 oath that a juror takes before the case starts, you
20 render -- "that you a true verdict render according to
21 the law and the evidence."

22 That is jurors are not required to know
23 the law, the Judge is the law of this case.

24 Have you ever served on a jury?

25 A No. I haven't.

1 Q At the conclusion of evidence in this case the
2 Judge will give you a written instruction or what we call
3 a "charge" and it tells you what the law is, it tells you
4 what the law applies to the case and it tells you that
5 you are to be governed by that charge.

6 As to the law, now, the jurors -- that
7 the Judge is the exclusive judge of the law, the jurors
8 are the exclusive judge of the fact and that is to say
9 a jury determines, first, what witnesses they believe,
10 disbelieve in whole or in part, you judge the credibility
11 of the evidence.

12 Could you judge the credibility of --
13 credibility of witnesses?

14 A I believe I could.

15 Q Now, the law sets down a standard or a burden
16 of proof, that is what the State must prove to you in
17 order to get a finding of guilt or answers to its
18 questions.

19 And that standard is "a reasonable
20 doubt."

21 There is a piece -- may I approach the
22 witness?

23 THE COURT: You may.

24 MR. OLD: Let me refer you to
25 Exhibit 6 and I will -- let me give you a moment to

1 review it.

2 There is a sentence that starts "A
3 reasonable doubt is a doubt based on reason", that is the
4 instruction the Court will give you on the definition of
5 reasonable doubt.

6 To be a juror you have to take the
7 Court's definition of that word and if you have a
8 different one in your own mind you have to lay it aside
9 and apply the Court's definition, can you do that?

10 THE POTENTIAL JUROR: Yes.

11 I can.

12 Q (BY MR. OLD) And that is true anytime in the
13 charge of the Court that he instructs you as to the
14 meaning of a word. I mean it has a specific legal
15 meaning and if it varies from what its ordinary meaning
16 is or from what you think it means then you have to say,
17 "Well, I am using the Court's definition and not mine."

18 And you would do that?

19 The top of that page is what is called
20 the "presumption of innocence" and that is that all
21 people are presumed to be innocent until proven guilty
22 beyond a reasonable doubt.

23 If the State did not prove to you Mr.
24 Wardlow's guilt beyond a reasonable doubt -- and I think
25 the Court talked about this in their statement to you the

1 other day, that the Defendant, Mr. Wardlow and Mr.
2 Wardlow through myself don't have a duty or burden of
3 proof, we don't have to do anything -- let's say the
4 State proved their case and on behalf of Mr. Wardlow Mr.
5 Wardlow and I did nothing, we sat here, you went in the
6 jury room to deliberate, okay, would you consider the
7 fact that Mr. Wardlow did not testify or that Mr. Wardlow
8 did not call witnesses on his behalf as an inference or
9 evidence against him?

10 A I don't know. It would depend on the evidence
11 I had heard against him.

12 Q You would make your finding on the evidence you
13 heard and not on the evidence you did not hear?

14 A Yes.

15 Q You would not consider the fact that Mr.
16 Wardlow did not testify as evidence against him?

17 A I don't think so.

18 I don't know. Those questions are hard
19 to answer when you have never been in that position.

20 Q I know they are and it's many things we get to
21 do to you, we get to put you in a position that you have
22 never been in and ask you what you would do.

23 A I don't think so. It would depend on the
24 evidence that was put before me.

25 Q But you would follow the law as to presumption

1 of innocence?

2 A Yes, sir.

3 Q The fact that Mr. Wardlow has been charged is
4 not evidence of guilt to you?

5 A No.

6 Q You understand that a charge merely is required
7 with the formality of that, that is you must charge a man
8 and tell him in writing what it is you said he did. It
9 doesn't mean that he did it, it's just a written charge
10 that gives rise to a trial.

11 May I approach the witness again?

12 THE COURT: You may.

13 MR. OLD: Let me ask you to
14 review what is marked "Defendant's Exhibit 1", it's
15 entitled "Witness List" and let me ask you to read over
16 that list to see if you can recognize any names on there
17 and if you do, if you know them, know who they are or,
18 you know, what is your knowledge of that person.

19 THE POTENTIAL JUROR: No. I
20 don't know any of these people.

21 Q (BY MR. OLD) You don't recognize any name, the
22 last name that brings up any flags in your mind?

23 A No.

24 Q Have you ever lived in Morris County?

25 A No.

1 Q In the Daingerfield area?

2 A No.

3 Q Around Cason?

4 A No.

5 Q Do you have friends or relatives in that
6 particular area?

7 A No. I haven't -- the people I work with at
8 work, some of them are from Daingerfield.

9 Q Have you heard anything about this case?

10 A When it happened I read about it, other than
11 that --

12 Q Do you recall what you read?

13 A Not really. It was just in the paper and I
14 read it, I remember that but that's all.

15 Q Anything from what you know that would go as
16 evidence against Mr. Wardlow?

17 A No. I haven't read anything about it since it
18 happened. It was just something I read in the paper.

19 Q You understand that is what somebody said about
20 it and not necessarily --

21 A Yes. Yes.

22 Q -- not necessarily an accurate report?

23 You understand regardless of what you
24 read or other people have said you have got to make your
25 verdict on your judgment in this case based on the

1 evidence that comes to you through the Court?

2 A Yes.

3 Q The sheet entitled "Special Issues", can you
4 pick it up? (Indicating)

5 As to Special Issue #2 at the top of
6 that it tells you mitigating evidence is evidence that
7 a juror might regard as regarding the defendant's moral
8 blameworthiness and it tells you in the question that you
9 may take into consideration the defendant's character and
10 his background and -- in answering that question would
11 you consider -- and I'm not asking you to tell me what
12 you would do with it -- would you consider evidence such
13 as age, background, family background, whether it be good
14 or bad, education, whether highly educated or uneducated
15 in considering that?

16 And I'm not asking you for a particular
17 result of that type evidence but would you at least hear
18 it and consider it?

19 A Well, I hope I would take into fact whether or
20 not he was guilty.

21 As I said, that's a place I have never
22 been so I don't --

23 Q Let me ask you, the evidence as to this
24 particular question and the question taking into
25 consideration all the evidence including the

1 circumstances of the offense, the defendant's character
2 and background and the personal moral culpability of the
3 defendant is there a sufficient mitigating circumstance
4 or circumstances -- circumstances to warrant that a
5 sentence of life imprisonment rather than the death
6 sentence be imposed, and in looking at it you are told
7 that you can consider evidence of his background.

8 A I don't believe if anybody is guilty of murder
9 why he left before -- if he did the deed he's guilty.

10 Q But I mean you have already found him guilty.

11 A Yes.

12 Q These are two questions that go to punishment
13 and as to whether or not -- you find a man guilty of
14 capital murder, he has at least a life sentence merely
15 by finding him guilty then you are asked to answer at
16 least these two Special Issues that determine what the
17 punishment is, a life sentence or a death sentence.

18 A As I said, it's going to be hard for me but I
19 know there are some cases it's necessary.

20 Q But I mean it's -- I don't think -- I mean what
21 you are saying -- I mean when a life is involved it's
22 hard but it is something that if the facts justified it
23 and you answered these questions you could keep the
24 result -- first, you do not give anybody a death
25 sentence, you answer questions on which the Court bases

1 a sentence and if you want to get real technical the
2 Judge doesn't impose the death sentence, the Legislature
3 of Texas did by the way the law is written. It says that
4 if you are found guilty of capital murder you
5 automatically have a life sentence which amounts to, you
6 will serve at least 40 years before you are eligible for
7 parole and then it says if you answer these questions or
8 these questions are answered from the evidence that
9 beyond a reasonable doubt there is a possibility that the
10 defendant would commit criminal acts of violence that
11 would constitute a continuing threat to society, if you
12 answer that question then you are asked to answer another
13 question.

14 If you answer that question "No" then
15 that results in the law giving the man a life sentence
16 then you are asked the next, if you answer the first
17 question "Yes" you are asked to take into consideration
18 all the evidence including the circumstances of the
19 offense, the defendant's character, his background and
20 his personal and moral culpability of the defendant, you
21 are asked that based on that evidence, which is really
22 to say all the evidence, is there a sufficient mitigating
23 circumstance or circumstances to warrant that a sentence
24 of life imprisonment rather than a death sentence be
25 imposed?

1 And if you answer that "Yes" then you
2 have the law instructs a life sentence, if you answer
3 that "No" then the law instructs a death sentence.

4 I mean this is, while you know the
5 result of your answers you as a juror do not determine
6 the sentence, the law determines the sentence.

7 You judge the facts of the case and
8 answer the questions.

9 And what I was asking you as to this
10 evidence you consider as to mitigating circumstances
11 could you consider the age of the person charged?

12 A I hope that I could consider all the facts.

13 Q I mean you wouldn't automatically reject the
14 evidence of age as going to mitigating, you would think
15 about it and consider it?

16 A Yes. I believe I would.

17 Q You would consider the person's background?

18 A Yes.

19 Q If you heard perhaps some medical evidence like
20 a psychiatrist or psychologist testifying and express
21 opinions would you consider that evidence?

22 I'm not saying you would follow his
23 evidence but would you consider it as evidence and give
24 it your judgment for credibility whether you considered
25 it credible or not?

1 A Yes.

2 Q And I guess that is to say we have always
3 talked about weighing evidence in the room, you would
4 weigh the evidence?

5 A Yes.

6 Q And if it proved something to you or proved a
7 mitigating circumstance you would consider what you would
8 do based on it?

9 A Yes.

10 Q You work out at Titus County Memorial Hospital?

11 A Yes. I do.

12 Q I believe you have been there for 16 years?

13 A That's right.

14 Q They had some kind of rehabilitation or
15 psychiatric hospital up on the top floor some time ago,
16 did you ever work there?

17 A No. I didn't.

18 Q I believe in the questionnaire you indicated
19 that you read a lot and read a lot about history?

20 A Yes.

21 Q Any particular people or type history that
22 you --

23 A The 1800s and American Indians I read about.
24 I don't know why.

25 Q The 1800s?

1 And you have a passion for any
2 particular era?

3 A I read a lot about the American Indians.

4 Q "American Indians?"

5 A It's just an interest of mine.

6 Q One of the inquiries on the questionnaire you
7 indicated that you felt like this country had a good
8 system of justice?

9 A Yes. Not perfect but --

10 Q What?

11 A It's not perfect but it's the best I know of.

12 Q In reaching your verdict, I mean we don't know
13 what law the Court is going to instruct you on because
14 the Court instructs you on the law that the facts raise,
15 I mean it depends on what happens and what is proven, but
16 the law that you are instructed on.

17 In some cases you may be instructed on
18 a statement of the defendant that is a written statement
19 and you may be asked to determine whether or not that was
20 a voluntary statement.

21 And the Court will tell you the
22 definition or what constitutes a voluntary statement and
23 the Court will instruct you that unless you believe
24 beyond a reasonable doubt the statement was voluntarily
25 made that you shall not consider that statement as

1 evidence.

2 Now, I mean, let's presume that a
3 statement is offered into evidence and the Judge
4 instructs you to determine whether or not the statement
5 was voluntarily made and it tells you how to do that and
6 you find that the statement was involuntary and the
7 Court's instruction to you would be to lay that aside and
8 any other evidence that resulted from the making of that
9 statement and do not consider it.

10 Do you think that you could follow that
11 instruction, lay that evidence aside?

12 A I think so.

13 Q And I mean that would be -- I mean that is
14 asking you not to consider something you heard?

15 A I believe so.

16 Q Okay. You wouldn't have any great problem with
17 it, I mean it's -- if you were a juror in this case would
18 you give the parties to this case the benefit of your
19 independent judgment?

20 A Would you say that again?

21 Q Would you give both parties to this suit the
22 benefit of your independent judgment in deliberating?

23 Now, when jurors deliberate they
24 discuss, I presume, I have never been on a jury, either
25 they discuss the evidence and I mean one of them says,

1 "I believe this" and the other one says "I believe that."

2 If you disagreed with other people on
3 what you believe would you stand your ground?

4 A Yes.

5 Q Okay. Now, I'm not saying you can't change
6 your mind but when you change your mind would it be based
7 on --

8 A Facts.

9 Q Facts?

10 A Yes.

11 Q I mean if you suddenly realized that everybody
12 but you thought a different way but you still were not
13 convinced they are right, you couldn't see why they were
14 and you disagreed with them would you stand there and
15 vote your independent conviction?

16 A Yes.

17 Q I mean it wouldn't get -- you wouldn't get
18 embarrassed?

19 A Well, I probably would but --

20 Q You wouldn't compromise what you believe the
21 truth to be?

22 A No. I don't think so.

23 THE COURT: Twenty-five
24 minutes.

25 MR. OLD: If Your Honor

1 please, that's all we have at this time.

2 THE COURT: Ma'am, if you will
3 step down and return back to the lounge I will bring you
4 back for some further instructions.

5 THE BAILIFF: Watch your step
6 there.

7
8 (The following occurred outside the
9 presence and hearing of the potential juror:)

10
11 THE COURT: Does the State
12 have any challenges for cause?

13 MR. TOWNSEND: Yes, Your
14 Honor.

15 In regard to the Fifth Amendment and
16 defendant's failure to testify Ms. Littles said that she
17 didn't know if she could put that aside. I believe she
18 would have to be able to put that aside in order to serve
19 on a jury.

20 I object on that basis.

21 THE COURT: Does the Defense
22 have any challenges?

23 MR. OLD: None, Your Honor.

24 THE COURT: First, I believe
25 that the failure to testify is a proposition of law that

1 only the Defense can rely on for a challenge but even if
2 the Defense offered a challenge I would overrule it
3 because I do believe that she said she could set it aside
4 and base it on the evidence.

5 The State's challenge is denied.

6 I find the juror qualified, I will put
7 her in the pool and make a decision next week.

8 Just tell her that she is a prospective
9 member of the jury, that we will notify her by the end
10 of next week whether or not she will be on the jury.

11 THE BAILIFF: Are you ready
12 for the second one?

13 THE COURT: Are you ready for
14 number two?

15 MR. OLD: May I have just a
16 couple of minutes?

17
18 (Recess.)

19
20 THE COURT: Okay. Let's get
21 Mr. Barker, he's the last one we have this morning so we
22 got to him quicker like we did Ms. Littles, I guess we
23 will take an early lunch because the other three are
24 coming in at 1:00.

1 FRED EARL BARKER, Potential Juror #411,
2 was called as a Potential Juror and, having been
3 previously sworn by the Court, testified as follows:
4

5 THE COURT: How are you doing,
6 sir?

7 Right over here. Watch that step.

8 Go ahead and take a seat, sir.

9 Are you "Fred Barker?"

10 THE POTENTIAL JUROR: Yes.

11 THE COURT: Mr. Barker, I'm
12 Gary Stephens, I'm presiding over the jury selection and
13 trial in this case.

14 And first I want to thank you for your
15 patience with us, we have recessed you and made you come
16 down yesterday and kept you all day and sent you home and
17 I apologize, we have to talk to our jurors in order and
18 we never know how long a session is going to last, it
19 might last 10 or 15 minutes, it might last a couple of
20 hours.

21 Sir, the lawyers have read your
22 questionnaire and they want to talk to you about some of
23 your answers.

24 The two lawyers that are representing
25 the State today is the elected District Attorney, Mr.

1 Richard Townsend from Morris County and the soon to be
2 District Attorney from Cass County, Mr. Randall Lee.

3 Mr. Lee, you are an Assistant District
4 Attorney there now?

5 MR. LEE: Presently. Right.

6 THE COURT: We have two
7 Defense Attorneys, present in the courtroom is Mr. Bird
8 Old, III, his partner for the case is Lance Hinson.
9 Lance will not be with us today.

10 Next to Mr. Old is the Defendant, Mr.
11 Billy Wardlow.

12 Now, Mr. Barker, as I said, the lawyers
13 have read your questionnaire and they are going to talk
14 to you about some of those answers and more importantly
15 they are going to talk about the principles of law
16 involved in a capital case and they are going to ask
17 questions and the answers will tell us, you know, whether
18 or not to put you on the jury.

19 In order to be a qualified juror you
20 have to be able to understand and follow the law but in
21 following the law doesn't necessarily mean that you are
22 going to be an appropriate juror, we have found over the
23 years of picking cases like this that many jurors
24 understand and can follow the law but they are not
25 appropriate in a death penalty case so that's why we need

1 to know something about what your thoughts and ideas and
2 how you think and how you got to those thoughts and
3 ideas.

4 There's no right or wrong answers, only
5 your answers. We are not looking for any particular
6 answer, we just want to know where you are coming from
7 and what your opinions are so we can decide whether or
8 not this is an appropriate case for you.

9 If you have any questions of us during
10 the session stop us, tell us what is on your mind so we
11 can clear it up.

12 If you are chosen as a juror we can't
13 talk to you about the case after today.

14 Sir, we won't probably be able to tell
15 you today about your jury service so far as whether you
16 are or not on the case as a juror, we are going to talk
17 to several jurors and then start picking some of those
18 jurors toward the end of next week. So we will have to
19 notify you next week.

20 That means as long as you are a
21 prospective juror I don't want you to talk about this
22 case or read anything about it in the paper.

23 Mr. Townsend.
24
25

VOIR DIRE EXAMINATION

BY MR. TOWNSEND

Q Mr. Barker, how are you?

A Just fine.

Q Mr. Barker, I have read your questionnaire and I have got a few questions based on some things I saw in your questionnaire that will take just a minute.

You indicate in your questionnaire that you know Mr. Old. The other attorney involved is Lance Hinson, do you know Lance?

A No.

Q How do you know Mr. Old?

A I just know he's a lawyer here in Mount Pleasant.

Q Has he ever been your lawyer?

A No.

Q Would you consider yourself a friend of his or just an acquaintance or do you just know who he is?

A I just know who he is.

Q Nothing about that relationship that would cause you a problem in this trial?

A No.

Q I notice also that you mentioned that you had had prior jury service in a murder case?

1 A That's correct.

2 Q Was this here in Titus County?

3 A That is correct.

4 Q And what was the result of that case?

5 A She was found not guilty.

6 Q "Not guilty?" Okay.

7 And I saw something here about a friend
8 or I assume it was a friend that you have that is on the
9 police force?

10 A That was my daddy-in-law.

11 Q Your father-in-law?

12 Is he still on the force?

13 A No. He passed away now.

14 Q I notice that you have a brother who is, I
15 believe you said he's now in TDC?

16 A That's correct.

17 Q For arson?

18 A Yes.

19 Q Can you just tell me a little bit about that,
20 is that something that happened here locally?

21 A That happened over in Franklin County.

22 Q Okay.

23 A Several years ago. And he was on probation and
24 he broke that probation.

25 Q Is that a situation that is -- let me ask it

1 this way; do you feel like that justice was served in
2 that situation or do you feel like he got a better deal
3 than he should have got or got a worse deal than he
4 should have got, how do you feel about it?

5 A Considering that he had been in Terrell for two
6 times I didn't feel like he deserved to go to Huntsville
7 but --

8 Q Okay. So basically you felt like he got more
9 punishment than he should have?

10 A Yes.

11 Q Mr. Barker, I have read your questionnaire in
12 regard to the questions about the death penalty and I
13 want to ask you something, the question is, are you in
14 favor of the death penalty and you checked "Yes?"

15 A Yes.

16 Q And then it says with reference to the death
17 penalty which of the following statements would best
18 represent your feeling, you circled, you know, if you
19 remember -- there were five or six choices there?

20 A Right.

21 Q And the one you circled was "Although I do not
22 believe that the death penalty ever ought to be invoked,
23 as long as the law provides for it, I could assess it,
24 under the proper set of circumstances."

25 Is that the way you feel or --

1 A Yes.

2 Q Well, Mr. Barker, I think my confusion comes
3 in, do you have your questionnaire in front of you?

4

5 (Handed to the potential juror.)

6

7 MR. TOWNSEND: My confusion
8 comes in up there in the middle of the first page.
9 (Indicating)

10

THE POTENTIAL JUROR: Okay.

11 Q (BY MR. TOWNSEND) Where it states, "Are you
12 in favor of the death penalty", your answer is, yes, you
13 are in favor of it?

14 A Yes.

15 Q Okay. You are in favor of it?

16 A Yes.

17 Q Okay. And then down here toward the bottom of
18 the page where it has this list of six different answers
19 -- do you see that? (Indicating)

20 A Yes.

21 Q You had circled "Number 3" which is "Although
22 I do not believe in the death penalty", that sentence
23 starts out by saying, "Although I do not believe in that
24 the death penalty ought ever to be invoked", that sounds
25 like you don't believe in it or that you are not in favor

1 of it.

2 Maybe, let's just do it this way; how
3 do you feel about the death penalty?

4 A I feel like if a person is guilty and proven
5 by the jury that they are guilty then they should get the
6 death penalty.

7 Q Okay. I guess my question is if you feel --
8 if you will read your answer there and your answer says,
9 "Although I do not believe that the death penalty every
10 ought to be invoked", is that still your answer?
11 (Indicating)

12 A No.

13 Q If you will just take a moment and go through
14 those six answers, possible answers there and tell me if
15 you think "3" would still be your answer or if you think
16 you would have a different and if so which one.

17 A I would change that "Number 3" to "Number 1."

18 Q "Number 1?"

19 "I believe that the death penalty is
20 appropriate in all murder cases?"

21 A Yes.

22 Q Okay. Okay. Mr. Barker, I want to talk to you
23 about some of your opinions and feelings and like the
24 Judge says, there's no right or wrong answer, we just
25 want to know how you feel, okay?

1 A Okay.

2 Q In this case the State is seeking the death
3 penalty. Should the jury find the Defendant guilty the
4 State will be requesting that the jury assess the death
5 penalty.

6 Your feelings about the death penalty
7 were, you circled this "Number 3" and now today you are
8 saying "Number 1", is that -- have you changed your mind
9 since that date or was that just kind -- did you kind of
10 misunderstand what we meant?

11 A I think I misunderstood the question.

12 Q So actually you believe -- your opinion is
13 basically a "Number 1" and is that opinion one that you
14 have held for a substantial period?

15 A Yes. It is.

16 Q Okay. Have you ever felt any differently about
17 the death penalty?

18 A No.

19 Q So as long as you have been, you might say "a
20 grown up" this is kind of the way you felt about it?

21 A Yes.

22 Q Do you know of any reason why you couldn't
23 serve on a jury and make the decisions necessary that
24 would result in the execution of an individual if the
25 facts and the evidence was appropriate?

1 A I do not.

2 Q You could do it?

3 A Yes.

4 Q Let me talk to you a little bit about murder
5 in Texas; in Texas there are basically sort of two kinds
6 of murder, one is what we call or what I call "plain
7 murder", just someone is -- intentionally killed another
8 individual, they don't have a legal justification or
9 excuse, you know.

10 When I say that I mean it wasn't self
11 defense and they weren't insane, it wasn't an accident,
12 they just did it, okay?

13 That's what we call "intentional
14 murder", when -- where the murder has been intentionally
15 or knowingly committed to cause the death of another
16 individual. In Texas that is punishable by the -- from
17 five years probation up to 99 years or life in the
18 penitentiary but it's not punishable by the death
19 penalty. A person cannot receive the death penalty for
20 that.

21 The only situation in Texas that a
22 person can receive the death penalty is if you have what
23 we call "capital murder" and what that is, it's just like
24 that plain murder I just discussed with you plus
25 something and that "plus something" is the murder was of

1 a police officer or fireman in the line of duty or the
2 murder was murder for hire or murder done during the
3 commission of a robbery or burglary or rape.

4 So basically you might say capital
5 murder is murder plus another crime along with it,
6 another set of circumstances along with it.

7 Do you think you are with me on that?

8 A Yes.

9 MR. TOWNSEND: Okay. If you
10 will look at -- approach the witness, Your Honor?

11 THE COURT: You may.

12 MR. TOWNSEND: There is a
13 sheet of paper up there that is the indictment in this
14 case -- yes, that's it right there.

15 If you will just read this part right
16 here then I will talk to you about that. (Indicating)

17 THE POTENTIAL JUROR: Okay.

18 Q (BY MR. TOWNSEND) Okay. Mr. Barker, can you
19 see from reading that indictment that if the State were
20 able to prove what is on that sheet of paper that rather
21 than that being murder that would be capital murder
22 because it alleges both the murder and the robbery?

23 A Yes.

24 Q Okay. Mr. Barker, in Texas we need the kind
25 of jurors to be fair and open-minded as to guilt and

1 innocence but also as to the punishment because in a
2 capital murder case once the defendant, if that defendant
3 is found guilty then the question shifts, the defendant
4 is not automatically going to receive the death penalty
5 just because you found him guilty of capital murder, then
6 you go back and you have a decision to make as to whether
7 that person should get the life sentence or the death
8 penalty.

9 Now, that decision is not going to be
10 made by just saying, you know, "How many want life, how
11 many want death", what you are going to do is you are
12 going to have two questions to answer and the answer to
13 those questions is going to result in whether the person
14 received a life sentence or the death penalty.

15 Do you think you are the kind of juror
16 who could keep an open mind and not just automatically
17 say, "Well, I find him guilty of capital murder, I want
18 him to have a life sentence", or "I found him guilty of
19 capital murder, I want him to automatically have the
20 death penalty."

21 Could you keep -- or keep an open mind
22 during that second part of the trial before deciding what
23 the proper sentence should be?

24 A I could.

25 Q So what we are saying is that the trial is

1 going to have two phases, the first is that guilt or
2 innocence phase where you determine whether you believe
3 the defendant is guilty or not guilty.

4 Of course if he's not guilty you are
5 going -- that's going to be the end of it but if he's
6 found guilty then you are going to go on to the second
7 phase and hear additional evidence and that evidence
8 might be of all sorts of -- kinds of evidence but it
9 might be involving psychological testimony, it might be
10 involving the defendant's family background, it might
11 involve any prior criminal activity that the defendant
12 had been involved in or any bad acts that the defendant
13 may have committed. All that sort of stuff could come
14 into that sort of hearing.

15 Would you be able to listen and consider
16 all that evidence as well as that evidence that you have
17 already heard before answering the question that you are
18 required to answer?

19 A I could.

20 Q You know, I have talked to you about those two
21 questions you have to answer, keep in mind that when you
22 are answering those questions -- and we will talk about
23 what those questions are in just a minute -- but when you
24 are answering those questions you are going to know what
25 the result of those answers are, you are going to know

1 if they say answer them in a certain way "Yes", know that
2 the defendant will receive a life sentence and you will
3 know if you answer them in another certain way that he
4 will receive the death penalty.

5 If you would there is a sheet up there
6 marked "Special Issues." (Indicating)

7 A Okay.

8 Q Looks like this. (Indicating)

9 A Okay.

10 Q Have you got it?

11 If you will read that Special Issue #1
12 to yourself then we will talk about that.

13 A Okay.

14 Q Okay. Mr. Barker, that Special Issue #1 to me
15 basically asks you to look at the probability that the
16 defendant in the future will be dangerous to society, is
17 that what it says to you?

18 A That's correct.

19 Q Well, that first Special Issue number like I
20 say, you are going to have heard the guilt and innocence
21 testimony and evidence but you are also going to have
22 heard some more evidence before you decide that first
23 Special Issue.

24 If you vote -- first let me point some
25 things about that, the State is required to have the

1 burden on that issue as well, we don't have to prove that
2 to you beyond a reasonable doubt but what we have to
3 prove to you is that there is a probability, not that,
4 you know, we don't have to guarantee you that he is going
5 to commit another act of violence or you don't have to
6 predict whether he will or not but just that there is a
7 probability.

8 And that term "criminal act of
9 violence", we are not required -- you know, this trial
10 is about a murder case but we are not required to prove
11 to you that he would go out there and commit another
12 murder, just that he would commit some criminal act of
13 violence, whether it be murder, assault, rape or
14 whatever, just prove that it's probable that he would
15 commit some criminal act of violence.

16 Are you with me?

17 A Yes.

18 Q Okay. After you have reviewed that question
19 and after you have heard all the evidence then you have
20 got to vote to Special Issue #1, if you vote "Yes" what
21 you are saying is basically that you believe that he
22 would probably commit other acts of violence, if you vote
23 "No" you are saying we haven't proved that to you.

24 If you vote "No" then the defendant is
25 automatically going to receive a life sentence, if you

1 vote "Yes" then we go down to that second Special Issue.

2 Are you with me?

3 A Yes.

4 Q Read that second Special Issue and then we'll
5 talk about it.

6 A Okay.

7 Q That second Special Issue to me, Mr. Barker,
8 basically means that you have looked at the case and you
9 have decided the defendant is guilty of capital murder,
10 you have decided that he's probably going to be dangerous
11 in the future because if you decided "No" to that you
12 wouldn't be looking at this second one so you have
13 already answered "Yes" to that but then that second
14 Special Issue basically is, is there something in this
15 case that says to me as a juror or something that is
16 sufficiently mitigating or that reduces the defendant's
17 blameworthiness enough sufficiently an amount enough that
18 you feel like he should receive a life sentence rather
19 than the death penalty.

20 Now, that is nothing that the State has
21 to prove, it's just left up to you and the other jurors'
22 opinion, okay?

23 We found him guilty of capital murder,
24 we decided that he's going to be dangerous in the future
25 but there is some reason out there that is sufficiently

1 mitigating to me to make me think that he might should
2 receive a life sentence rather than the death penalty.

3 Now, that there is an issue that if you
4 answer that question "Yes" what you are saying is, "Yes,
5 he committed the crime", "Yes, he's going to be dangerous
6 in the future but I want to give him a life sentence
7 based on the sufficient mitigating circumstances."

8 If you answer "Yes" to that that's what
9 you are doing.

10 A Okay.

11 Q And you are going to know that if you answer
12 "No" to it he's going to get the death penalty and you
13 will know that, too.

14 My question to you, Mr. Barker, is if
15 the evidence and the facts were appropriate could you
16 answer those questions in such a way that the defendant
17 would receive the death penalty?

18 A I could.

19 Q Okay. Let me ask you this way; we have had
20 jurors -- I have talked to jurors before who said, "Okay.
21 Now, if I find the defendant, if the evidence shows me
22 that the defendant is guilty of capital murder and the
23 evidence also shows me that the defendant is probably
24 going to be dangerous in the future that's enough for me.
25 I am giving him the death penalty, I'm not going to be

1 able to find anything in that Special Issue #2 that is
2 going to keep me from giving him the death penalty."

3 Do you understand what they are saying?

4 A Yes.

5 Q What they are saying is that they can't really
6 be fair and impartial, they can't really go back after
7 they have decided guilt or innocence and after they
8 decide he's probably going to be dangerous in the future,
9 they can't go back and reconsider all that evidence again
10 before making an answer to Special Issue #2 because you
11 see what I'm saying, they have already made up their mind
12 once they have answered that first question of guilt or
13 innocence, they have answered that first Special Issue
14 as to dangerousness, "Buddy, that's enough for them,
15 their mind is closed. They know what they are going to
16 do." You see, those people aren't qualified to serve on
17 a capital murder jury because they are not keeping an
18 open mind as to the possibility -- as to the possible
19 answers on these Special Issues.

20 Do you think that you could keep an open
21 mind throughout the trial?

22 A I could.

23 Q Let me talk to you about some general areas of
24 the law, Mr. Barker.

25 Do you have any questions or problems

1 right now with what we have talked about so far?

2 A No.

3 Q Okay. Let's say for instance that the
4 defendant, you have looked at the evidence and you have
5 decided, well, the State has proved their case that the
6 defendant is guilty of murder but they haven't quite
7 proved that robbery part.

8 Then the jury would have to find the
9 defendant guilty of murder but not capital murder, do you
10 understand?

11 A Yes.

12 Q Okay. And like I said earlier in murder the
13 range of punishment is not life or the death penalty, the
14 range of punishment in a murder is anywhere from five
15 years probation up to 99 years or life, a wide range, you
16 know.

17 As the Judge talked to you the other
18 day, murder can take on many different faces, it can be
19 an extremely vicious murder or it can be what we might
20 call a "mercy killing."

21 Do you know what a "mercy killing" is?

22 Someone is disabled or sick or whatever
23 and wants to die, do you understand that if someone out
24 of pity or sympathy or whatever reason, if someone kills
25 that person even if the person asks them to it's still

1 an intentional causing of another person's death or it's
2 still a murder and so I think you can see there that that
3 broad range of punishment is designed to fit a broad
4 range of crimes even though they are all called "murder."

5 Could you consider the full range of
6 punishment before deciding what punishment to give a
7 person if they were convicted of murder?

8 When I say "consider it" we are not
9 asking you to say, "Well, I would give a person life or
10 I would give a person five years probation" but could you
11 consider the full range of punishment?

12 A Yes.

13 Q Okay. And you could consider even five years
14 probation?

15 A Yes.

16 Q The State is required to prove our case beyond
17 a reasonable doubt and I'm not going to go into an
18 explanation of that but it is certainly not beyond all
19 doubt but beyond reasonable doubt.

20 When I say that that is our burden of
21 proof, the State takes that burden of proof into any
22 criminal trial, we get out case and, you know, we are
23 required to prove it.

24 Do you understand that if the Defense
25 on the other hand, they are not required to prove their

1 client innocent, we are required to prove his guilt.

2 Is that okay with you?

3 A Yes.

4 Q Okay. Along with that goes what we call the
5 Fifth Amendment privilege.

6 Now, the Fifth Amendment privilege talks
7 about how a defendant in a criminal case has the right
8 not to testify if they choose not to. I think that is
9 something that you are probably familiar with from
10 reading the newspaper and watching TV and that sort of
11 thing?

12 A That's correct.

13 Q Would you be able to, you know, it's kind of
14 human nature thing that we would be curious about whether
15 or not a person -- "Well, I wonder why they didn't
16 testify" or "If it's me I sure would like to get up there
17 and tell my side of the story."

18 That's kind of human nature, don't you
19 think?

20 A Yes.

21 Q But what we have got to have in the way of
22 jurors, we have got to have those people that can sit
23 there, listen to the evidence that is presented and base
24 their decision on that evidence.

25 And of course if the defendant didn't

1 testify then there wouldn't be anything there so far as
2 his testimony.

3 Would you be able to base your decision
4 just on the evidence and not say, "Well, he must be
5 guilty, he didn't testify", you know, or, "If he's really
6 innocent he would want to get up there and testify",
7 would you be able to do that?

8 A I could.

9 Q And that also holds true not only during the
10 guilt or innocence phase of the trial but also during the
11 punishment phase.

12 Let me ask you this; if you found a
13 person guilty of capital murder and decided on, based on
14 the evidence that he was probably going to be a danger
15 to society in the future would it help you any or would
16 you feel better about giving him a life sentence or would
17 it sway you in any way if he got up there and told that
18 he was sorry, do you think that would have any bearing
19 on it?

20 A No.

21 Q So, see what I'm saying, that defendant has a
22 right also during that punishment phase not to testify
23 and when I asked you that question what I was getting at
24 is we need fair and impartial jurors who are going to
25 decide those punishment issues based on the evidence

1 presented and not hold it against the defendant or if he
2 did not testify during that punishment phase he has that
3 right then also and he may testify if he chooses to but
4 he doesn't have to, you wouldn't hold that against him?

5 A No.

6 Q If he chose not to testify at that part of the
7 hearing?

8 A No.

9 Q Let me ask you about testimony from different
10 types of individuals; you are going to hear testimony in
11 criminal cases -- and understand we are not particularly
12 talking about this case, we are talking about criminal
13 cases in general -- you are going to hear testimony from
14 psychologists, police officers, ministers, maybe people
15 you know, probably people you don't know but irregardless
16 of who that witness is or what their profession is we
17 need jurors who can start all the witnesses out at the
18 same place on the starting track, not give anybody a
19 little bit of head start and say, "Well, I know old Joe
20 Blow so I just know he's going to tell the truth" or
21 "That guy is a police officer, I know he's telling the
22 truth" or, you know, what we need is those people who can
23 start everybody off the same way and listen to their
24 testimony and then decide whether their testimony is
25 important or not important, truthful, not truthful, could

1 you do that?

2 A I could.

3 Q And could you do that fairly and in such a way
4 that you didn't give any head start to any particular
5 witness?

6 A I could.

7 Q Not start any particular witness behind the
8 rest of them?

9 A Yes.

10 THE COURT: Twenty-five
11 minutes.

12 MR. TOWNSEND: Thank you, Your
13 Honor.

14 In this case and in every criminal case
15 in Texas that little piece of paper there that you read
16 up there at first talks about murder and robbery, that's
17 the indictment. (Indicating)

18 THE POTENTIAL JUROR: Okay.

19 Q (BY MR. TOWNSEND) The indictment is the
20 charging instrument that the Grand Jury charges a person
21 with a crime, do you realize that this indictment,
22 though, is not evidence?

23 A Yes.

24 Q Okay. The evidence will come from the witness
25 stand and you will not be able to use that indictment as

1 evidence in any way?

2 A Okay.

3 Q Could you do that?

4 A Yes.

5 Q In some criminal cases you will have the
6 statement presented, written statement that might be
7 presented that -- that are supposed to be statements that
8 were written by the defendant or maybe statements --
9 statements that were written by maybe someone else --
10 let's assume that there is a statement that had been
11 presented to you as a juror that is from the defendant;
12 one of the things the Court will instruct you is that if
13 that statement in order for you to consider that
14 statement as evidence you have to first decide that this
15 statement was one that was voluntary, is that something
16 you could do?

17 A Yes.

18 Q Okay. So if that at first you have to decide
19 beyond a reasonable doubt that that statement was
20 voluntary before you consider it as evidence you would
21 be -- would you be able to if you heard a statement but
22 you weren't convinced beyond a reasonable doubt that it
23 was voluntary would you be able to put that statement out
24 of your mind and not consider it as evidence in any way?

25 A I could.

1 Q Mr. Barker, I have been asking you a lot of
2 questions and I think I'm about through.

3 Is there anything that you would like
4 to ask me or just anything that you would like to tell
5 us that maybe I didn't ask the right question that would
6 allow you to?

7 A No.

8 Q Is there any reason you feel like that you
9 could not return a verdict that results in the death
10 penalty in this case if the evidence was appropriate to
11 you?

12 A No.

13 MR. TOWNSEND: I pass the
14 juror.

15 THE COURT: Let's take about
16 a 10 or 15 minute recess then we will start up with the
17 Defense.

18 You may step down, sir and the Sheriff
19 will take you back to the waiting room or lounge.

20
21 (The following occurred outside the
22 presence and hearing of the potential juror:)

23
24 THE COURT: Let's stay on the
25 record a moment.

1 Mr. Wardlow, yesterday I asked you if
2 you had any objection to ABC filming part of the voir
3 dire proceeding and you said you did not. This is your
4 last chance, do you have any objection?

5 THE DEFENDANT: No, sir.

6 THE COURT: You all may set
7 up.

8 A VOICE: Thank you, sir.

9
10 (Recess.)

11
12 THE COURT: Let's get back on
13 the record.

14 Mr. Townsend, you and Mr. Old during our
15 recess there was an agreement to excuse Mr. Barker, juror
16 six, is that correct, Mr. Townsend?

17 MR. TOWNSEND: That's correct,
18 Your Honor.

19 THE COURT: Mr. Old, do you
20 agree?

21 MR. OLD: That is correct,
22 Your Honor.

23 THE COURT: I want the record
24 to reflect whenever we do discuss agreements to excuse
25 we are referring to Article 35.05 of the Code of Criminal

1 Procedure.

2 Bring Mr. Barker back in, please.

3 Mr. Barker, you don't have to come back
4 up on the witness stand.

5 There has been an agreement to excuse
6 you so you will not be on the jury.

7 I appreciate you coming in and you have
8 a good day, sir.

9 THE POTENTIAL JUROR: Okay.

10 Thank you, sir.

11 THE COURT: Yes. The next
12 juror is not scheduled until 1:00 o'clock, we have tried
13 to call her to get her in early but I understand she is
14 showing a house.

15 Mr. Townsend, do you have any matters
16 that you wish to take up with the Court before we recess
17 for lunch?

18 MR. TOWNSEND: Not at this
19 time, Your Honor.

20 THE COURT: Mr. Old, do you
21 have any matters to take up?

22 MR. OLD: Your Honor, we have
23 no new matters to take up.

24 You had indicated you would make your
25 Findings of Fact and Conclusions of Law today.

1 THE COURT: I intend to do so
2 today, I have not really written out all my Findings of
3 Fact so I'm not prepared to read them into the record at
4 this time. I will probably do it right after lunch.

5 MR. OLD: Thank you, Your
6 Honor.

7 THE COURT: All right. Let's
8 recess for lunch.

9
10 (Noon recess.)
11

12 THE COURT: Is the State ready
13 to proceed?

14 MR. TOWNSEND: Yes.

15 THE COURT: Is the Defendant
16 ready to proceed?

17 MR. OLD: Yes.

18 THE COURT: Let's bring in our
19 next juror.

20 THE BAILIFF: Who's next on
21 the list?

22 MR. TOWNSEND: I do not know.
23 I do not have my list.

24 THE COURT: Leo, after you
25 bring her out I will need the original questionnaires.

1 I don't know where they are, let me get them first if you
2 don't mind.

3 Bring in Mary Edwards.

4 THE BAILIFF: Yes, sir.

5 Just go up through there and watch your
6 step.

7 THE COURT: Go ahead and take
8 a seat, ma'am.

9
10 MARY NELL EDWARDS, Potential Juror #26,
11 was called as a Potential Juror and, having been
12 previously sworn by the Court, testified as follows:

13
14 THE COURT: Ma'am, are you
15 Mary Edwards?

16 THE POTENTIAL JUROR: Right.

17 THE COURT: Ms. Edwards, I'm
18 Gary Stephens, I'm presiding over the jury selection and
19 the trial in this case.

20 First, don't be nervous about the
21 camera, you will not be on film and the cameras will not
22 record what you are saying, the cameras are here for a
23 purpose not really associated with this trial, it has to
24 do with capital trials and the expense but it does not
25 have to do with this particular case so don't worry about

1 being on TV.

2 THE POTENTIAL JUROR: Okay.

3 THE COURT: Ma'am, you have
4 two lawyers for the State of Texas that will be talking
5 to you today, we have the elected District Attorney from
6 Morris County, Richard Townsend.

7 THE POTENTIAL JUROR: Yes.

8 THE COURT: And he's assisted
9 by Mr. Randall Lee who will take over as District
10 Attorney in Cass County in January.

11 We have two Defense Attorneys, in the
12 courtroom is Mr. Bird Old, III.

13 MR. OLD: How are you doing?

14 THE COURT: His partner for
15 this in this case, Mr. Lance Hinson will not be with us
16 this afternoon.

17 Next to Mr. Old is the Defendant Billy
18 Wardlow.

19 Now, ma'am, the attorneys have read your
20 answers to the questionnaire and this afternoon are going
21 to discuss with you some of those answers, the principles
22 of law involved in capital murder trials, you will be
23 asked a lot of questions and the answers will let us know
24 whether or not to put you on the jury.

25 To be a qualified juror you have to be

1 able to understand, follow the law, you don't necessarily
2 have to agree with the law in order to be on a jury, if
3 you disagree with some aspect of the law but you can
4 clearly set aside your disagreement you are qualified.

5 It's kind of like filing taxes, we may
6 not like it but we file taxes, we do it to comply with
7 the law.

8 But, ma'am, if you have a disagreement
9 with some aspect of the law that will prevent you from
10 following the law you are not qualified.

11 So we need to know how you think and
12 what you think, you are not on trial, there's no right
13 or wrong answers but your answers will let us know
14 whether or not to put you on the case.

15 We have found over the years picking
16 jurors on this kind of case even though a juror may be
17 qualified that doesn't necessarily mean that juror is
18 appropriate for a capital murder case.

19 So, just relax, open up, share your
20 opinions with us and we'll make this as quick as
21 possible.

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: Do you have any
24 questions?

25 THE POTENTIAL JUROR: No.

1 THE COURT: Mr. Townsend.

2
3 VOIR DIRE EXAMINATION

4 BY MR. TOWNSEND

5
6 Q Okay. Ms. Edwards, we want you to relax, we
7 are all just staring at you, we have got cameras going.

8 A Yes. "Relax."

9 Q "But go ahead and relax."

10 Ms. Edwards, we have had an opportunity
11 to read your questionnaire and I want to talk to you
12 about the death penalty and also just about some general
13 areas of the law.

14 But first I want to let you know that
15 there's no right or wrong answers to these questions, we
16 just want you to tell us what your honest opinion is.

17 If you don't understand one of my
18 questions be sure and ask me to restate it for you but
19 I, to let you know up front that the State of Texas in
20 this case is seeking the death penalty against this
21 Defendant Billy Wardlow.

22 And that's not a very pleasant thing to
23 be involved in a lot of the time but it's part of our
24 justice system and that's what we are here for.

25 You answered in your questionnaire that

1 basically that you believed in the death penalty and
2 thought it was appropriate in some murder cases and could
3 return a verdict in a proper case which consisted of the
4 death penalty, is that the way you still feel?

5 A Yes.

6 Q Have you ever felt differently about that?

7 A In some cases I wouldn't have a problem with
8 it at all.

9 Q Okay. That's what we are asking you, not that
10 you would do that in every case but you feel it's
11 appropriate in some cases?

12 A In some cases I could do it.

13 Q Okay. You mentioned in your questionnaire that
14 you could do it in rare cases, you mentioned mass murder
15 or a murder where children were involved?

16 A That's correct.

17 Q I assume you mean -- you mean where children
18 were the victims?

19 A That's exactly right.

20 Q Does your ability to assess the death penalty
21 be limited strictly to mass murder and children cases?

22 A I'm not sure. I'm not sure without knowing the
23 facts.

24 Q You would just have to hear the case is what
25 you are saying?

1 A That's exactly right.

2 Q Okay. Ms. Edwards, in Texas there are two
3 kinds of murder, one is where someone has intentionally
4 or knowingly caused the death of another individual, and
5 I'm just going to call that "plain murder" as opposed to
6 "capital murder", a person in that situation could be
7 given a sentence of anywhere from five years probation
8 to 99 years or life but they could not receive the death
9 penalty.

10 In order to receive the death penalty
11 -- of course this is without any kind of legal
12 justification such as self defense or accident or
13 insanity or anything of that nature but that person could
14 not receive the death penalty.

15 In order to receive the death penalty
16 in Texas you have to be convicted of capital murder and
17 that's the plain murder I have just described to you plus
18 something and that "plus something" has to do with murder
19 of a police officer in line of duty, the murder of
20 someone during the commission of a robbery or rape, a
21 burglary, something of that nature.

22 Do you think you are pretty clear on the
23 difference there between the two?

24 A He made it pretty clear the day he went over
25 that with us.

1 Q Okay. The indictment in this case is sitting
2 up there by -- somewhere if you will refer to that.

3 THE COURT: Ma'am, it's right
4 in front of you. It's that second page.

5 THE POTENTIAL JUROR: Let me
6 get my glasses, magnifying glasses.

7 THE COURT: Okay.

8 MR. TOWNSEND: If you will
9 just read over that main portion there.

10 THE COURT: The next page --
11 next sheet, that one. (Indicating)

12 THE POTENTIAL JUROR: Yes,
13 sir.

14 MR. TOWNSEND: Okay. Can you
15 see where by reading that if the State could prove what
16 is alleged in that indictment that that rather than being
17 what I described as a "plain murder" that would be a
18 capital murder?

19 THE POTENTIAL JUROR: Yes,
20 sir. I do understand that.

21 Q (BY MR. TOWNSEND) Okay. What we need as
22 jurors in a capital murder case, we need those people who
23 can keep an open mind as to whether first on indictment
24 or innocence but if the defendant is found guilty then
25 they would be able to keep an open mind as to what the

1 punishment would be because the punishment if a person
2 is even found guilty of capital murder the punishment is
3 either going to be a life sentence or the death penalty.
4 And we need those jurors who could be fair and open-
5 minded and listen to all of the evidence during the trial
6 and then listen to all the evidence during the punishment
7 hearing before making their decision as to whether the
8 appropriate punishment should be a life sentence or the
9 death penalty.

10 Do you believe that you could do that?

11 A Yes.

12 At this point I would have to know a lot
13 more than I know now to have an opinion one way or the
14 other about this case or any case.

15 Q So as of right now you are not leaning toward
16 the death penalty or leaning toward a life sentence, you
17 have got to hear it?

18 A I would want to know exactly what happened.

19 Q Okay. In order to be able to follow the law
20 and through the death penalty case there are two phases
21 to the trial, first you hear all the evidence that the
22 State would present or any that the Defendant might
23 present would involve strictly is the defendant guilty
24 of the crime or not guilty, basically "Did he do it?"

25 Of course if you find him not guilty

1 then the trial is over but if you find him guilty then
2 you go ahead and go to what we call the punishment phase
3 where are you are going to hear additional evidence. And
4 this evidence is not going to be about the crime itself,
5 you have already heard that, this evidence is going to
6 be evidence of the -- oh, it could be something about the
7 family history or family that the defendant grew up in,
8 it could be psychological testimony, it could be
9 testimony of past criminal history for the bad acts that
10 have been committed by the defendant, it could be almost
11 a laundry list of things that you might hear during that
12 punishment hearing.

13 Of course the State, the State's
14 evidence would be designed to make you feel as if the
15 death penalty might be appropriate.

16 If the Defense presents evidence it
17 would probably be to try to sway you that way.

18 What we need in the way or jurors is we
19 need those folks who can listen to all this evidence
20 during the guilt or innocence phase and even if they find
21 the defendant guilty not say at that point, "Okay, I
22 found this person guilty of capital murder. That's all
23 I need to hear, that's enough for me. He can get the
24 death penalty", without considering this other evidence.

25 See, that person is not being fair and

1 that person is not following the law.

2 Do you think you could wait and not make
3 your decision on the death penalty until you have heard
4 all the evidence during the punishment hearing?

5 A I would have to hear it all before I could make
6 an opinion.

7 Q Okay.

8 A Or "have an opinion."

9 Q Let me talk to you a little bit just about how
10 -- about that punishment decision; in Texas that decision
11 is based on two questions, you are not going to just go
12 back there and raise your hand after you have heard all
13 the evidence and say, "How many want life and how many
14 want death", what's going to happen is you're going to
15 have two issues to answer.

16 There is a sheet of paper up there and
17 on top of it it says "Special Issues", if you will pick
18 that up, please. (Indicating)

19 A Yes.

20 Q Will you read that where it says "Special Issue
21 #1", would you just read that over to yourself and then
22 I will talk to you about it?

23 A Okay.

24 Q Okay. Ms. Edwards, let me just tell you what
25 the Special Issue means to me and then you can tell me

1 whether you agree or disagree that it's kind of what it
2 meant to you, basically I think that Special Issue was
3 talking to you and asking you about the probability that
4 the defendant would commit future acts of violence or
5 future danger --

6 A That is a danger to society, that's what it
7 means to me.

8 Q Okay. I want to point out a couple of things
9 about that one, just like the State has the burden of
10 proof to prove our case beyond a reasonable doubt in the
11 guilt and innocence stage, also as to Special Issue #1
12 we have got to be able to prove that to you also.

13 Now, in looking at Special Issue #1 you
14 can go back mentally and look at that evidence during the
15 guilt or innocence phase of the trial and consider that
16 and then also consider the evidence that you heard during
17 the punishment hearing to help you decide whether you
18 should answer that "Yes" or "No."

19 Bear in mind that that Special Issue
20 tunes in there to the word "probability", if you will
21 -- the question there you notice that you are not
22 required to decide for certain that the defendant would
23 commit future acts of violence, you are not required to
24 guarantee that he would or even predict that he would but
25 you are required to determine that we have proved beyond

1 a reasonable doubt that it's probable that he would
2 commit some criminal act of violence in the future.

3 And another phrase I would like you to
4 tune in on is where it says "criminal acts of violence",
5 what this trial is about is about capital murder but we
6 are not required to prove to you that it's probable that
7 he would commit another capital murder, just that it's
8 probable that he would commit some other criminal act of
9 violence in the future.

10 You know, "criminal act of violence" can
11 be a rape, it can be an attempted murder, it doesn't
12 necessarily have to be a murder.

13 Are you clear on what we have got to
14 prove there?

15 A Yes. I am.

16 Q The next thing we are talking about is if you
17 vote "Yes" on Special Issue #1 then you will go to
18 Special Issue #2, if you vote "No" on Special Issue #2
19 and say, "No, I don't think he's going to be a danger in
20 the future" or "I don't think it's probable" then the
21 defendant would automatically get a life sentence.

22 But, on the other hand if you vote "Yes"
23 then you go to Special Issue #2.

24 If you would read that one over for a
25 moment and we'll talk about it.

1 A All right.

2 Q Okay. Ma'am, Special Issue #2 is sort of a
3 legal mumbo-jumbo that basically means to me that, okay,
4 I have looked at this case, I have studied all the
5 evidence, I have decided that this defendant is guilty
6 of capital murder, I have decided that he's probably
7 going to be dangerous in the future but now I have got
8 to look at Special Issue #2, I have got to go back and
9 look at all that evidence mentally again and decide is
10 there anything in this case that is sufficiently
11 mitigating to this defendant that would make me believe
12 that the appropriate sentence in this case would be a
13 life sentence rather than the death penalty.

14 And that term "sufficient and
15 mitigating", that could be one circumstance that you
16 heard evidence about or it could be a combination and
17 that's not something that the State has to prove beyond
18 a reasonable doubt to you, that is just something that
19 is just left to your opinion and the other jurors and
20 that sufficient mitigating circumstance that it's talking
21 about, this is, it says in this definition here that
22 "Would tend to reduce the defendant's blameworthiness for
23 the crime."

24 Ms. Edwards, what we need in jurors or
25 any of those kinds of jurors that are going to be able

1 to decide guilt and innocence and then hear all the other
2 testimony during the punishment hearing, decide Special
3 Issue #1, by this time they are at Special Issue #2 and
4 I have heard jurors say in the past, "Now, wait a minute.
5 If I decide this guy committed capital murder" and then
6 went ahead and looked at Special Issue #1 and decided,
7 "Well, I have got a guy here that has committed capital
8 murder and he's probably going to be dangerous in the
9 future, I'm going to give him the death penalty. I'm not
10 going to worry with Special Issue #2, I know what I need
11 to do after Special Issue #1."

12 See, that person is not being a fair and
13 impartial juror because he's not following the law. The
14 law says what you must do is you look at guilt or
15 innocence when you look at Special Issue #1 but before
16 looking at Special Issue #1 -- before deciding your
17 answer to Special Issue #2 you mentally reconsider all
18 the evidence that you have heard and then decide what
19 your answer is to Special Issue #2.

20 If you vote "Yes" on two you are saying,
21 well, yes, I found something that is sufficiently --
22 mitigates this case and makes me believe that he should
23 receive a life sentence rather than the death penalty.

24 If you vote "No" then you are in fact
25 assuring that this defendant gets the death penalty.

1 Did I confuse you with all that?

2 A No. I understand.

3 Q Okay.

4 A But I would have to know all about that young
5 man before I would have an opinion one way or the other.

6 Q So you would not make your decision on Special
7 Issue #2 until you have heard all the evidence and
8 consider everything?

9 A I would have a lot of questions that I would
10 want to have answered.

11 Q Well, Ms. Edwards, I'm not sure what your
12 questions would be but, you know, you would have to be
13 able to decide the case based on the evidence that you
14 heard.

15 There may be some evidence that you
16 might want to hear that you wouldn't be presented, you
17 might be curious about some aspect of the defendant's
18 background or some aspect of the case that you might not
19 hear.

20 Would you be able to make a decision
21 based on the evidence that you did hear?

22 A That's what I would have to do.

23 Q Okay. Because I think it's natural that we are
24 all curious and there are things that come out in any
25 criminal trial that we are curious about but there are

1 usually things that don't come out, too and we all wonder
2 in our mind, "I wonder what -- why they didn't talk about
3 that."

4 Let me shift gears a little bit and talk
5 to you about just some general areas of the law that
6 relate to all cases, not necessarily capital murder
7 cases.

8 First of all in this case or in a
9 capital murder case, let's say if a person is charged
10 with murder, robbery and the State proved to you beyond
11 a reasonable doubt that the defendant committed the
12 murder but you are not quite sure that they proved to you
13 -- don't believe they proved to you that he also
14 committed the robbery then what you would do is you would
15 find that person guilty of murder but not capital murder.

16 Are you with me?

17 A Yes.

18 Q Okay. And the punishment for murder in Texas
19 is different from capital murder, it's from five years
20 probation to 99 years or life in the pen and in order to
21 be a juror on a case like that you have got to be able
22 to consider that full range of punishment, it's five
23 years punishment on one end or 99 years to life on the
24 other end.

25 Could you consider that full range of

1 punishment?

2 A Yes.

3 Q In any criminal case the burden of proof starts
4 and ends with the State of Texas, that's our burden, we
5 accept that and I think you understand that when we have
6 to prove the defendant is guilty beyond a reasonable
7 doubt the defendant does not have to prove he's innocent,
8 so to speak, is that okay with you?

9 A Yes.

10 Q Okay. In talking about that what we mean is
11 you can carry that to an extreme, you can carry it to an
12 extreme, the defendant can sit over there, his attorney
13 can sit over there and do absolutely nothing. We have
14 still got to prove our case and you have to make your
15 decision based on the evidence and based on whether we
16 proved our case or not irregardless of what they chose
17 to do or chose not to do.

18 Is that okay with you?

19 A Yes.

20 Q Along with that goes the Fifth Amendment
21 privilege and that, of course is your defendant's right
22 to remain silent and not testify if that's his choice.

23 Is that okay with you?

24 A I don't know.

25 Q Well, let me explain, let me talk to you this

1 way; the defendant, of course has that right and of
2 course if he doesn't testify, if he chooses not to
3 testify -- and there can be any number of reasons for
4 that -- if he chooses not to testify then the burden of
5 the case is still right here where it is and where it
6 remains right here.

7 Could you decide your -- could you make
8 your mind up and decide what your opinion was as to the
9 guilt or innocence of the defendant?

10 A That's what --

11 Q Based strictly on the evidence that you hear.

12 A -- that's what I would have to do.

13 Q And not hold it against the defendant in any
14 way if he chose not to testify?

15 A That's what I would have to do.

16 Q Could you do it?

17 A Yes.

18 Q Okay. And that carries over into the
19 punishment phase of the trial as well. It's possible
20 that during the punishment phase -- it's kind of human
21 nature, you know, if you find a person guilty of a crime
22 whether it's capital murder or maybe some other crime
23 that when you get to that punishment phase you might feel
24 better about the defendant or you might prefer and have
25 a little more sympathy or be more likely to give a

1 lenient sentence if the defendant got up there on the
2 witness stand and said, "Hey, I'm sorry about this."

3 And that's human nature. Most of us
4 would probably feel that way to some extent.

5 So do you understand that during the
6 punishment phase of that trial that the defendant still
7 has that right not to choose to testify? Would you be
8 able to decide Special Issue #1 as well as Special Issue
9 #2 based strictly on the evidence that is presented and
10 not hold it against the defendant in any way if he chose
11 not to testify during that part of the trial?

12 A I have never done this before but I believe I
13 could.

14 Q Ma'am, during a murder trial or any other kind
15 of trial you are going to hear testimony from all sorts
16 of witnesses, some of those people would be -- and I'm
17 not talking about this trial, just "trials in general",
18 some of those people might be psychiatrists or doctors
19 or ministers or police officers or maybe even someone you
20 know. It's not likely in this trial, it could be someone
21 you know testify but it's possible.

22 In such a case you are going to have all
23 sorts of different types of witnesses and we need jurors
24 who can sit during that trial and hear those witnesses
25 and give them all -- start them all out at the same spot

1 so far as your believing them or not believing them, not
2 just automatically say, "Well, that guy is a minister,
3 I know he's telling the truth" or "This guy has got a
4 police uniform on so I don't think, you know, I feel like
5 I know everything he says is going to be right."

6 Would you be able to start everybody out
7 on the same starting block and then listen to their
8 testimony and then judge after you heard their testimony?

9 A Yes.

10 Q And not just automatically come to some
11 assumption whether it be good or bad?

12 A No. I would not do that.

13 Q Okay. The piece of paper I had you look at
14 earlier was the indictment in the case, you don't need
15 to refer back to it unless you just want to but again it
16 is a charging instrument from a Grand Jury that basically
17 just charges a person with a crime but you understand I
18 believe that that is not any evidence of guilt. The
19 evidence in this case has to come from the witness stand.

20 You wouldn't use the fact that he had
21 been indicted as any evidence, would you?

22 A No.

23 Q Any murder cases or any criminal cases of any
24 sort you may have written statements where the defendant
25 has written out a statement that basically amounts to

1 what you might consider a confession.

2 The Judge will charge you I will expect
3 in that sort of situation if it were to come up that
4 before you could use that statement as part of the
5 evidence in the case you would have to decide beyond a
6 reasonable doubt that that statement was voluntary and
7 if you decide that this statement was not voluntary that
8 you wouldn't consider it in any way in deciding whether
9 the person was guilty or not guilty.

10 Would you be able to do that?

11 A Yes.

12 Q Okay. I want to talk to you a little bit about
13 your questionnaire.

14 One thing I noted, back before I
15 practiced law I was a school teacher at Daingerfield High
16 School and I couldn't help but notice that you are a
17 sister to Tommy Walker?

18 A That's right.

19 Q I am surprised that you would admit that.

20 A I would very definitely admit it since he's the
21 only one I have. I am proud of him.

22 Q Tommy was coaching there when I was teaching
23 there, I have known him for a long time, he's a good
24 fellow.

25 But anyway I did notice that about your

1 questionnaire and I had some other questions about your
2 questionnaire; you mentioned up here that you had a
3 friend who was in prison and your explanation for that
4 was where it says do you know any -- anyone who has been
5 to prison or had been or is in prison and if yes give
6 details.

7 And you said, "A friend, self defense?"

8 A Right.

9 Q Can you just tell me a little bit about that
10 situation?

11 A It was -- it's a lady that her husband had just
12 beat her up and she killed him.

13 Q Okay. And was that something -- I know you are
14 from Titus County, was that something that happened in
15 Titus County or was it somewhere else?

16 A It was in another -- I don't think it was in
17 Titus, it was very close by.

18 Q And even though the situation was as you said
19 it -- she ended up doing some time in the pen for it --
20 is she currently still in the pen?

21 A No. I think she did maybe three months. It
22 was very little.

23 Q She didn't spend much time?

24 A No.

25 Q Is that a situation that you were involved with

1 personally? I mean you weren't like a witness or
2 anything like that?

3 A No. I was not.

4 Q Okay. Was this friend someone that you were
5 pretty close friends with?

6 A Her sister is my best friend.

7 Q Okay.

8 A And I know her but not as well.

9 Q Is there anything about that case that would
10 bother you if you were serving as a juror in this case?

11 I mean did you have any hard feelings
12 toward men or did you have any hard feelings toward
13 police officers or anything of that nature?

14 A No. No.

15 Q You mentioned in your questionnaire that you
16 had some prior experience as a juror in a case?

17 A It was -- what is it called, the indictment
18 phase of it?

19 Q "Grand Jury?"

20 A The Grand Jury is the only thing I have ever
21 done.

22 Q You have never been involved in -- as a juror
23 in a criminal case?

24 A No.

25 Q Were you on the Grand Jury here in Titus

1 County?

2 A Right.

3 Q How long ago was that?

4 A Goodness, I mean it's been several years ago,
5 probably five years ago.

6 Q Chuck Bailey is the District Attorney here, was
7 he the District Attorney at that time?

8 A No. It was --

9 Q "Mr. Cobb?"

10 A "Cobb", yes.

11 Q You also mentioned that you know Mr. Old who
12 is the Defense Attorney, there is also another attorney
13 working this case, Lance Hinson, do you know him?

14 A No.

15 Q How do you know Mr. Old?

16 A Well, I have been in Mount Pleasant for years,
17 I just know him.

18 Q Have you -- has he represented you in any sort
19 of legal --

20 A No.

21 Q -- work?

22 A No.

23 Q You say you just know him, are you friends or
24 just acquainted with him?

25 A Know him just to say "Hello, how are you,

1 what's going on", that's about it.

2 Q Mr. Old is representing the Defendant in this
3 case, the fact that he represents the Defendant, would
4 that sway you in any way in this case?

5 A No.

6 Q You wouldn't mind meeting him on the street two
7 or three weeks after the case was over and if the
8 decision that you made was not one you felt he would
9 agree with that wouldn't bother you?

10 A No.

11 Q You also mentioned something about a friend
12 having a drug problem, do you remember that in your
13 questionnaire?

14 A It's my daughter.

15 Q Your daughter?

16 I'm not going to try to get personal
17 with you and I hope you don't feel as if I am but is
18 there anything about that situation with her drug problem
19 that would cause you a problem toward having any ill
20 feelings toward any group of people?

21 A No. It happened many years ago but it's okay
22 now but there was a bad period in her teen years.

23 Q I have got teenagers.

24 A Just pray it doesn't happen.

25 Q I do quite frequently.

1 You also mentioned that you knew
2 something about the facts of the case, what is it that
3 you know about the case?

4 A Well, what I have read in the papers and at
5 that time I was living close to where this happened, I
6 was living in Cason -- almost in Cason.

7 Q Were you living in Titus County?

8 A Yes.

9 Q Of course Cason is very close to Titus County?

10 A Right.

11 Q Do you know the Defendant Mr. Wardlow?

12 A No. I don't.

13 Q Do you know any of his family?

14 A No.

15 Q Do you know Mr. Cole, the victim?

16 A No.

17 Q Did you know -- you say you lived close to
18 Cason, from your -- did your knowledge come from the
19 newspaper or from hearing people talk about it?

20 A Just in the office and in the papers.

21 Q You said "In the office", this is at the real
22 estate office?

23 A Right.

24 Q Whatever your knowledge might be, whether it's
25 from the newspaper or from things you might have heard

1 in the office is there anything you know what -- that
2 doesn't disqualify you as a juror, the fact that you have
3 heard something in the office or that you have read
4 something in the newspaper as long as you could put that
5 information aside and realize that this is not evidence
6 and not used as evidence during this trial in any way.

7 Could you do that?

8 A Yes.

9 Q Okay. Because, you know, the stuff that
10 appears in the newspaper or the stuff you hear on the
11 street, some of it might be true, it might not be true,
12 you know, that sort of thing.

13 You could do that?

14 A Yes.

15 Q Okay.

16 THE COURT: Thirty minutes.

17 MR. TOWNSEND: Thank you, Your
18 Honor.

19 Ms. Edwards, you mentioned up here on
20 the first page of your questionnaire, you said you are
21 in favor of the death penalty in certain cases and your
22 explanation -- I talked to you about it a little bit
23 before, you said, "Rare cases" and you mentioned mass
24 murder and children involved.

25 I think what you are saying to me is

1 basically that you wouldn't know what you could do or
2 what you would feel appropriate until you heard
3 everything?

4 MR. HINSON: That's exactly
5 right.

6 Q (BY MR. TOWNSEND) And you are not saying or
7 -- or are you saying, you know, you have mentioned these
8 two specific instances, you have mentioned mass murder
9 type cases and you have mentioned cases where children
10 are involved?

11 A Those were examples.

12 Q Those were just examples?

13 A Yes.

14 Q You are not saying if it wasn't a mass murder
15 or wasn't children involved there wouldn't be a chance
16 that you could do it?

17 A I'm saying I would have to know the
18 circumstances.

19 Q Ms. Edwards, do you know of any reason why you
20 couldn't serve on this jury and return a decision in this
21 case that resulted in the death penalty and the execution
22 of this Defendant if you felt the evidence was
23 appropriate?

24 A What was the question? I didn't quite
25 understand what you are saying.

1 Q Do you know of any reason that you could not
2 return a verdict?

3 A No. I don't.

4 Q That resulted in his execution?

5 A I don't.

6 Q If you know --

7 A If it warranted --

8 Q You felt like the evidence was appropriate?

9 A That's right.

10 Q You could do it?

11 A Yes.

12 MR. TOWNSEND: I'll pass the
13 juror, Your Honor.

14 THE COURT: Mr. Old.

15

16 VOIR DIRE EXAMINATION

17 BY MR. OLD

18

19 Q Ms. Edwards, have you ever lived in Pittsburg?

20 A Pardon me?

21 Q Have you ever lived in Pittsburg?

22 A As a child.

23 Q Not in your adult life?

24 A Pardon?

25 Q Not in your adult life?

1 A No.

2 Well, yes, I did, between Pittsburg and
3 Gilmer in the Brumley community.

4 Q Did you build a house three or four years ago
5 in Camp County?

6 A No. No.

7 Q You are in the real estate business, aren't
8 you?

9 A Right.

10 Q You say that at the time this event occurred
11 you were living near Cason?

12 A Right.

13 Q That would have been at the intersection of
14 Highway 11 and the Union Hill Road, I forget which Farm-
15 to-Market it is?

16 A That's right.

17 Q That's just about as far south as you can go
18 in Titus County and stay in Titus County?

19 A Yes.

20 Q You are about a mile, mile and a half to Cason?

21 A Probably a mile and a half.

22 Q I know you work here in Mount Pleasant, did you
23 shop in Cason?

24 I think there's one store in Cason, it's
25 a convenience store?

1 A Yes. That's where I bought bread and milk.

2 Q Did you frequently go there?

3 A I was probably there a dozen times the whole
4 time I lived there.

5 Q You said you did not know Mr. Cole, did you
6 know of him?

7 A No.

8 Q Assume with me that he hung around that store
9 and frequented it himself, if you later became aware that
10 while you did not know him by name that you became aware
11 that, yes, you had seen him in there, perhaps spoke,
12 carried on a casual conversation --

13 A It wouldn't have happened. The times that I
14 went in there I ran in and got bread and walked out. I
15 have never talked to any man.

16 Q Never talked to anyone?

17 A No.

18 Q Ms. Edwards, what I understand you do for a
19 living, you are somewhat of an independent contractor?

20 A Yes.

21 Q And the effect of that is if you don't work you
22 don't get paid?

23 A That's exactly right.

24 MR. TOWNSEND: I object, Your
25 Honor. That is irrelevant.

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THE COURT: Overruled.

MR. TOWNSEND: Economics.

MR. OLD: As I think was explained to you by the Judge at general voir dire a couple of weeks ago an economic excuse was not an excuse that they would allow you as a juror.

THE POTENTIAL JUROR: That's what he said.

Q (BY MR. OLD) I'm not asking you about necessarily the loss of money, if you were tied up in the trial of this case or any case for say two or three weeks --

A It would be -- it would be a very hardship if that's what you are asking me.

Q That's not so much the loss of money, would it also be the loss of contacts in your business?

A That's right. Because if you don't work in my business for two or three weeks, well, then you might -- might put you three months behind.

Q As a matter of fact for example what you will make in the next two or three weeks actually so far as realizing money, you know it's going to happen because it's a contract that you have, that you already --

A Right. It could fall through.

Is that what you asked me?

1 In other words, if I don't stay on top
2 of what I have got going right now I could lose what I
3 already have started.

4 Q Well, I mean could you have a prospect today
5 and you can't get back to him for two or three weeks, you
6 may lose him?

7 A Correct.

8 Q And in effect your business or your independent
9 business --

10 A Yes.

11 Q -- comes to a stop if you are taken away from
12 it for a prolonged period of time?

13 A That's right.

14 Q Will you agree with me that the trial of this
15 case demands your full attention?

16 A Yes.

17 Q I know you would not do this purposely or I
18 don't believe you would, would you -- could you be
19 inclined to hurry in your deliberations or perhaps
20 compromise not from an objective standpoint, from a
21 subjective standpoint, that is you might be in a little
22 bit too big of a hurry to get back to your job or your
23 profession?

24 A I certainly wouldn't intend to.

25 Q I know you wouldn't intend to but I mean from

1 a subjective standpoint could that be an influence on
2 your deliberations?

3 A I don't think so.

4 Q Now, let me -- you consider yourself to be an
5 independent thinker?

6 A Yes. I do.

7 Q In order to influence you does it take someone
8 presenting to you a logical argument?

9 A What?

10 Q A logical argument based on something?

11 I'm not going to change your mind by
12 just saying "No, you are wrong, Mary?"

13 A Not hardly.

14 Q I will have to say, "No, you are wrong, Mary,
15 because?"

16 A I want to know why I am wrong.

17 Q You have been on a jury before?

18 A Grand Jury.

19 Q "Grand Jury?"

20 Yes.

21 Well, I have never been on a jury either
22 so we are even.

23 A You don't want to be either.

24 Q When I'm describing to you what I think happens
25 in deliberation and you are to vote your conscience, that

1 is your beliefs based on the evidence?

2 A Yes.

3 Q That is not to say that another juror cannot
4 change your mind by saying, "Yes. But you are not
5 remembering this testimony and this testimony" and then
6 whether or not it's believable or not?

7 A They would have to prove to me that I was wrong
8 if that's what you are asking me.

9 Q Yes.

10 A And I would listen to it.

11 Q You would listen to it?

12 A I would listen to it.

13 Q But merely by people saying, "Mary, you are
14 wrong, we all think another way?"

15 A No.

16 Q That wouldn't do it?

17 A No. That wouldn't do it.

18 Q In deliberation, I don't know whether it will
19 take four hours or four days or four weeks and no one
20 else knows or -- for 12 people to agree in any case I
21 mean when you go in there I mean there is no time limit
22 set on deliberations.

23 A What was your question?

24 Q My question is this, going back to -- you are
25 going to worry about your business while you are away

1 from it?

2 A I probably would. That's the way I pay my
3 bills.

4 Q Is that going to effect your independent
5 judgment and/or is it going to perhaps allow your level
6 of persuasion by others to be reduced?

7 A I don't think so.

8 Q You don't think so?

9 A No. I don't.

10 Q Is it a possibility?

11 A I wouldn't think so.

12 Q Your brother Tommy Walker, the fact that he and
13 Mr. Townsend talk to or know each other, does that have
14 anything to do with anything?

15 A I wasn't even aware of it.

16 Q Now that you are aware of it?

17 A No.

18 Q The fact that he thinks your brother is a fine
19 fellow, that's not going to influence you at all?

20 A I wouldn't think so because I know him.

21 Q The fact that he's your brother's -- a friend
22 of his, I don't know whether he is or not --

23 A No.

24 Q -- that's not going to effect your
25 deliberations?

1 A No.

2 Q You were on a Grand Jury?

3 A Yes.

4 Q And you deliberated and returned indictments?

5 A Right.

6 Q You will be instructed by the Judge in this
7 case when he gives you his charge -- and first let me
8 explain; His Honor is the exclusive Judge of the law of
9 this case and he will give you the law of the case at the
10 conclusion of evidence, you are instructed to take the
11 law and make certain fact findings, you decide, you are
12 the jury.

13 When I say "you" I'm talking about you
14 and the others are the exclusive judges of the facts of
15 this case.

16 Do you consider the fact of indictment
17 to be any inference of guilt?

18 A No.

19 Q Okay. I mean -- I distinguish inference from
20 evidence, "inference" is -- simply does it infer to you
21 in any way that this man is guilty?

22 A It indicates that there is enough evidence to
23 try him is the way I understand the law but not to prove
24 innocence or guilt.

25 Q But in the deliberating, objectively or

1 subjectively would you consider the fact that he had been
2 indicted and that indictment returned to be an inference
3 of guilt?

4 A No.

5 Q You can totally lay aside that fact?

6 A Yes.

7 Q You were questioned by the District Attorney
8 as to the Fifth Amendment and that basically is that Mr.
9 Wardlow does not have to testify, he does not -- I mean
10 he does not have to testify nor is he compelled to call
11 witnesses and those things are not inferences of guilt
12 or evidence of guilt, the Court will tell you that in his
13 charge.

14 A Yes.

15 Q That you shall not consider his failure to
16 testify as evidence against him or as an inference of
17 guilt.

18 In answering one of the questions I
19 thought you kind of stumbled at in your answer, I was not
20 sure, you said if I understood you correctly you said it
21 would raise a question in your mind and then I think you
22 said you thought you could set it aside?

23 A What I said was it would make it a lot easier
24 for me if all questions were answered but if they were
25 not answered then I would have to go by what was put

1 before me.

2 Q But in deliberating objectively or subjectively
3 are you sure that you are not -- in assuming that he did
4 not testify would you have to say, you know, "He could
5 have got up and at least said, no, that wasn't true and
6 the fact that he did not tends to make me think this is
7 true?"

8 A I kind of felt that way until the Judge the
9 other day explained to us some of the reasons why he
10 didn't and he went into that pretty thoroughly with us
11 and I do understand why there would be some cases where
12 they wouldn't.

13 Q Where they would not?

14 Okay. I am not -- you understand the
15 law, what I'm asking you is about your ability, if you
16 are sure you could lay that aside?

17 A Yes.

18 Q There is a list in front of you, I believe it
19 has a "1" on it at the top, it says "Witness List."
20 (Indicating)

21 A Yes.

22 Q Will you review that list and in reviewing it
23 will you review it for me making mental notes of names
24 that you recognize or of people that you know.

25 A I don't know any of them.

1 Q You don't even recognize any name?

2 A I don't recognize a name period.

3 Q In the time that you lived near Morris County
4 either by name or just on site did you acquire the
5 knowledge of any of their law enforcement officers?

6 A I don't recognize a name on here.

7 Q In that as to law enforcement officers I think
8 you expressed the opinion that they are underpaid on your
9 questionnaire?

10 A Very definitely.

11 Q Do you hold in general law enforcement members,
12 officers in high esteem?

13 A I just think for the work they do they need to
14 be paid more.

15 Q You consider them generally to be credible
16 people?

17 A Yes. I do.

18 Q Your -- one of your jobs in this case and one
19 of the things the Court will instruct you is that you are
20 the exclusive judge of the credibility and weight to be
21 given to the evidence.

22 And that is you may reject or accept any
23 of the evidence or any -- any reason you find, I mean
24 simply "I didn't -- I just don't believe that person",
25 you don't have to sit down and say "I don't believe the

1 witness so and so because of this this and this", I mean
2 if you don't believe them you don't believe them.

3 Would the fact that a witness was a law
4 enforcement officer give that witness a head start with
5 credibility in your mind?

6 A Not necessarily. No.

7 Q Well, --

8 A No.

9 Q "No?"

10 Okay. I want to get rid of that
11 "necessarily?"

12 A Okay. "No."

13 Q You would just every witness from the same
14 starting point?

15 A Yes, sir.

16 Q Would the mere fact that it was proven that the
17 person was a law enforcement officer go to the issue of
18 credibility? I mean the officer or position would not
19 give you -- give him anymore credibility?

20 A No.

21 Q Would you set any different standard for
22 judging a law enforcement officer as a witness as you
23 would a lay witness?

24 A No.

25 MR. OLD: May I approach the

1 witness, Your Honor?

2 THE COURT: You may.

3 MR. OLD: There is a page
4 before you "6", there you go.

5 Can I get you to review what has been
6 marked "State's Exhibit 6" starting with the second full
7 paragraph on the page? (Indicating)

8 THE POTENTIAL JUROR: Right
9 here? (Indicating)

10 Q (BY MR. OLD) Yes.

11 A Okay.

12 Q This is the legal definition of the word
13 "beyond a reasonable doubt", you were asked some
14 questions earlier about would you find beyond a
15 reasonable doubt.

16 When the Court instructs you that a word
17 has a particular meaning or special definition or that
18 is the word's legal definition and you are required to
19 use the Court's definition as opposed to your own. If
20 it is different, if you have a different criteria or
21 definition of reasonable doubt can you set it aside and
22 follow the instruction of the Court and use the Court's
23 meaning of the word reasonable doubt as opposed to your
24 own?

25 A Yes.

1 Q Okay. As to the definition you read, are you
2 offended in any way by that definition, do you disagree
3 with it?

4 A No.

5 Q You would have no problem in making your
6 factual decision in this case based upon that definition?

7 A I wouldn't think so.

8 Q Let me -- Mr. Townsend spoke to you for a
9 moment about statements of the accused, I think he called
10 them "confessions" or "written statements", the issue of
11 whether a statement is voluntary or not is an issue for
12 the jury to decide, again, the voluntariness of a
13 statement has a special legal definition or a criteria,
14 that is the State must prove to you beyond a reasonable
15 doubt that the criteria for the statement to be voluntary
16 was met.

17 A I don't understand the question.

18 Q Okay. I haven't got to the question yet.

19 A Okay.

20 Q In that instruction, and it is the law of this
21 case, that whether you believe the statement is true or
22 not if based upon the issue of voluntariness you find
23 that it was not voluntarily made that you are to totally
24 disregard that statement as evidence or any evidence that
25 came to you through that statement being made, can you

1 follow that instruction, and my question is this; your
2 belief is the statement is true, your finding as to
3 whether it was voluntary or not is that it was not proven
4 to you beyond a reasonable doubt that it was voluntary,
5 can you totally lay aside the knowledge of that, the fact
6 of that statement and make your decision based upon the
7 rest of the evidence in the case that is not related to
8 that confession, the confession itself?

9 A I think I could.

10 Q Okay. And that is to say you could totally
11 follow the instructions, I mean you could just blank that
12 out of your mind?

13 A I have never been here before.

14 Q I know you haven't.

15 A But I think I could.

16 Q You think you could?

17 Do you have a doubt as to whether you
18 could or not?

19 A If that was the way the law reads and that was
20 the way it was supposed to be done I would hope that I
21 could.

22 Q Okay. And that is even in a question assuming
23 that you believed the statement to be the truth, you
24 believe the statement is truthful but you do not believe
25 it is voluntary?

1 A I think I could. Okay. I think I could.

2 Q Do you think the knowledge of that statement
3 in that case might could or would effect your verdict in
4 the case?

5 A I would hope that it wouldn't and I think I
6 could.

7 Like I said, I have never been here
8 before.

9 Q You gave, "You might could or would", is that,
10 "Yes, I think it would might", is it "May?"

11 MR. LEE: I don't think he can
12 limit the witness to her answer on the question as to all
13 of the implications that would enter in.

14 THE COURT: Sustained.

15 If you feel like either side has tried
16 to put you in a position that you didn't say something
17 let them know "That's not what I said" and correct it.

18 THE POTENTIAL JUROR: What I'm
19 saying, Your Honor, is that I think I could put it aside,
20 I don't know. I have never been in this situation
21 before.

22 THE COURT: Do you have any
23 reason to believe that you could not set it aside?

24 THE POTENTIAL JUROR: No.

25 MR. OLD: In your

1 questionnaire you have expressed this opinion, that you
2 are in favor of the death penalty?

3 THE POTENTIAL JUROR: Right.

4 Q (BY MR. OLD) In your adult life has that
5 opinion changed?

6 A No.

7 I think in some instances it's the only
8 answer.

9 Q I am not -- have you gone from being say a
10 person 15 years of age or at anytime in the past if you
11 had been put to that question would you have answered it
12 differently, I mean have you changed your opinion?

13 A No. In my adult life I have felt that way.

14 Q I want to ask you a question about the answer
15 that you circled and that is that you believe the death
16 penalty is appropriate in some murder cases and you could
17 return a verdict in a proper case.

18 Okay. That says "murder cases", it
19 doesn't say "capital murder cases", now, the question
20 is, it doesn't specify between what Mr. Townsend called
21 "plain murder" and capital murder.

22 Do you think that the death penalty is
23 an appropriate -- should be an appropriate punishment in
24 other cases other than capital murder cases?

25 I'm not testing you on what the law is,

1 I'm asking you what you think the law ought to be?

2 A I'm not sure I fully understand what you are
3 asking me. I am just saying that there has been some
4 cases where -- there has been some cases where I think
5 the death penalty was very definitely warranted.

6 Q Mr. Townsend defined capital murder for you as
7 plain -- intentionally or knowingly killing someone while
8 in the course of a robbery?

9 A Right.

10 Q And so forth?

11 A Right.

12 Q The killing of a peace officer or fireman while
13 they are in the line of duty, I think it's also a child
14 under the age of six.

15 Now, in answering that question capital
16 punishment is appropriate in some murder cases, are there
17 murder cases or circumstances that you can think of --
18 I'm not asking you what the circumstances are whether --
19 --where you think it's appropriate or not, whether it fits
20 the Texas Penal Code definition of capital murder or not?

21 A I can't think of any.

22 Q You would limit it to circumstances that the
23 law defines?

24 A Right.

25 Q The punishment for capital murder as you have

1 been told results first on the finding of guilty of
2 capital murder in at least a life sentence, life in this
3 case is a 40 year sentence or it's 40 years before you
4 become eligible for parole, are you generally familiar
5 with the legal concept of parole?

6 A Only what the Judge explained to us the other
7 day in Court.

8 Q And you will be instructed and charged by this
9 Court not to consider parole but you will be told that
10 if a person is convicted of capital murder a life
11 sentence means that he will -- that he or she will serve
12 at least 40 actual years before one becomes eligible for
13 parole and eligibility does not equal parole, just
14 because you are eligible does not mean that you are
15 paroled, okay, that's the lower end of the range of
16 punishment for capital murder.

17 The upper end, I mean it's one of two
18 things, it's either that or death by lethal injection.

19 If in this case you found that -- in any
20 murder case that the defendant had intentionally killed
21 someone without justification and you found that beyond
22 a reasonable doubt but there was a reasonable doubt in
23 your mind as to whether or not it was in the course of
24 a robbery, an arson, a kidnapping and those things we
25 talked about then you would have found him guilty of the

1 lesser and included offense of murder or what Mr.
2 Townsend calls "plain murder", I would rather call it
3 "non-capital murder", the range of punishment for non-
4 capital ranges from a five year probated sentence to life
5 and you will be instructed on that and you will be
6 instructed again not to consider in your sentencing the
7 law of parole.

8 If you are instructed not to consider
9 the possibility of parole can you do that in assessing
10 a sentence?

11 A Yes.

12 Q Okay. Now, you don't really assess a sentence
13 in a capital murder case, you know the result of your
14 answers will result in either life or death. I mean the
15 law assesses the sentence, you make findings of fact in
16 a non-capital case, you assess a period between five
17 years probated and life, can you conceive of
18 circumstances where a murder had been committed to where
19 you could give as little as a five year probated
20 sentence, you have a murder?

21 A I understand.

22 Q I'm not asking -- I'm talking about a set of
23 circumstances and the way a murder could be committed
24 where you could consider the lower range of punishment?

25 A Yes. I can think of some ways. Yes.

1 Q And for non-capital murder can you conceive of
2 a set of circumstances where a life sentence would be
3 appropriate?

4 A I would probably have a problem with that.

5 Q You would?

6 A Yes.

7 Q You do not think you could consider the full
8 range of punishment for murder?

9 A No. No. I misunderstood what you were -- what
10 you were asking me. I'm sorry.

11 Q You said you could have a problem with giving
12 a life sentence?

13 A No. What I said, I would have no problem if
14 it was proven to me that it was capital murder, the high
15 or low range.

16 Q Okay. Now, I'm not asking you about capital
17 murder, I'm talking about plain non-capital murder.

18 A I thought you were finished with that and you
19 went on with capital murder.

20 Q For plain -- plain vanilla or non-capital
21 murder can you conceive of a set of circumstances where
22 you could impose the upper range of the punishment for
23 non-capital murder?

24 A Yes.

25 Q Okay.

1 THE COURT: It's been 35
2 minutes.

3 MR. OLD: Thank you, Your
4 Honor.

5 In answer to the Special Issues you were
6 looking at earlier, the top says "Special Issues", it's
7 marked "SVDX 5." (Indicating)

8 THE POTENTIAL JUROR: Okay.

9 Q (BY MR. OLD) I want to talk to you about the
10 second issue, let's first talk about the first issue; you
11 were asked to find beyond a reasonable doubt the answer
12 to that question and the question is is there a
13 probability that the defendant would commit criminal acts
14 of violence that would constitute a continuing threat to
15 society, you were asked to find beyond a reasonable doubt
16 the possibility of something.

17 Now, would the fact that -- and in
18 answering that question you have already found -- you
19 wouldn't be answering that question unless you found the
20 defendant guilty of capital murder, you understand that?

21 A Yes.

22 Q Okay. Would the fact that you had found him
23 guilty of capital murder along convince you beyond a
24 reasonable doubt that there is a possibility that the
25 defendant would commit criminal acts of violence?

1 MR. TOWNSEND: Object, Your
2 Honor, he's asking her a question that she is not going
3 to be required to answer, he's asking her the
4 "possibility", the word is "probability."

5 MR. OLD: I said
6 "probability."

7 THE COURT: I'm going to
8 sustain the objection. I will let you rephrase.

9 MR. OLD: My question is in
10 answering that question you are at a point to where you
11 and 11 other people have found a man guilty of capital
12 murder, the fact that you have found -- would the fact
13 that you have found him guilty of capital murder prove
14 to you beyond a reasonable doubt that there is a
15 probability that the defendant would commit criminal acts
16 of violence that would constitute a continuing threat to
17 society?

18 THE POTENTIAL JUROR: There
19 could be cases where I might think not.

20 Q (BY MR. OLD) Would you tend to think that the
21 fact that you found him guilty of a capital crime, there
22 are cases where that alone would do it?

23 A Then I didn't understand the last part of your
24 question.

25 Q There are cases where the fact that you found

1 a man guilty of capital murder that would lead you to
2 find beyond a reasonable doubt that the probability that
3 we are talking about existed?

4 A I think there could be circumstances where I
5 might believe either way.

6 Q What I'm asking you, you could conceive of a
7 capital murder where the fact you found him guilty
8 wouldn't prove to you beyond a reasonable doubt?

9 A Yes.

10 Q Now, the next question, issue is as to
11 mitigating circumstances, you are familiar with that, you
12 have read that issue several times.

13 A The second part of this? (Indicating)

14 Q Yes. The Special Issue, what is marked
15 "Special Issue #2?"

16 A Right.

17 Q Would you consider evidence of age to be
18 evidence of mitigation?

19 A It would depend on the age.

20 Q Okay.

21 A There's a difference in say 10 and 18.

22 Q The difference, say 25 and 80?

23 A There would be no difference.

24 Q There would be no difference between you --
25 between 25 and 80?

1 A Not really. No.

2 Q Is there a breaking point on age where you
3 would reject it as evidence in mitigation?

4 A Not unless that person was 80 and senile or
5 whatever.

6 Q I mean would you reject anybody over the age
7 of 18? Would you reject evidence of age?

8 A I don't think so.

9 Q I'm not saying that you would find it to be
10 mitigating, would you consider it?

11 A I think he used from 18 to 80, those figures?

12 Q Yes.

13 A I think anybody that age, I don't think it
14 would make a difference with me.

15 Q You mean you would not -- you would reject 18
16 to 80 age alone as evidence of mitigation?

17 A Right.

18 Q Would a person's family history or the
19 environment that they were raised in, would that be
20 evidence of mitigation that should be considered
21 mitigating?

22 A Possibly.

23 Q Would you consider their belief in christianity
24 or any other religion as evidence of mitigation?

25 A Possibly.

1 Q You said that you had read an article about the
2 case on trial in the newspaper?

3 A Yes.

4 Q Is that correct?

5 A Yes. Yes.

6 Q And you have heard it discussed, I think you
7 said at your office?

8 A Yes.

9 Q As to what you have heard, would it require
10 evidence to remove any fact or statement made to you?

11 A Okay. I don't quite understand what you are
12 asking me.

13 Q I don't know what you have been told but let's
14 assume that --

15 A It was not being told anything, it was just
16 talked about in discussion.

17 Q Okay. In discussion, I mean somebody said
18 something about it and talked something about it, can you
19 tell me who the speaker was?

20 A I probably couldn't tell you, we were just a
21 round table discussion mostly, it was not what had been
22 done, it was why it had to happen, why it happened, that
23 was the extent of it.

24 Q What source was quoted from whoever had
25 knowledge?

1 A Someone in the office was reading the newspaper
2 article that was in the Tribune.

3 Q Okay. Anything that was stated in that
4 conversation or any source of authority, if you consider
5 the newspaper a source of authority, they make mistakes?

6 A I don't consider the newspaper a source of
7 authority.

8 Q There were factual statements in there about
9 what happened apparently?

10 A I can't even remember now exactly what was
11 said.

12 Q You don't remember what was in the newspaper?

13 A No.

14 Q Are you sure it was a Mount Pleasant newspaper?

15 A I think so.

16 Q How long ago was this?

17 A It was right after it happened.

18 Q Is there anything in your knowledge from
19 newspaper or from hearsay or otherwise, what other people
20 have said about it that is -- that would -- in order for
21 you to disbelieve that there would have to be proof made
22 to you or evidence produced?

23 A It would have to be proof and in evidence. I
24 don't know. I don't know.

25 Q Okay.

1 A I mean I don't know what happened.

2 Q Ms. Edwards, I was in the waiting room of your
3 office about 10 days ago, I was there picking up Mr. Joe
4 Redfearn who is one of your bosses?

5 A Brokers.

6 Q "Brokers?"

7 A Yes.

8 Q And you made the statement to me I didn't want
9 you on this jury or "You don't want me on your jury?"

10 A Yes.

11 Again, that was based on the fact that
12 I need to work.

13 Q You don't want to be on the jury?

14 A No. I don't.

15 Q Okay. And that was based on the fact you are
16 not -- that you don't want to take off from work, you
17 don't want to neglect your work?

18 A I think I have several very good deals working
19 right now and I could run the risk of losing them if I
20 am not there.

21 Q Let me go back to that; I know -- I don't
22 believe anyone would deliberately get in a hurry, force
23 a decision or agree with somebody just to agree to get
24 back to work or something like that?

25 A I would not do that.

1 Q I know you would deliberate, you have some --
2 some things so to speak that are important to you that
3 are -- may materialize in the next --

4 MR. TOWNSEND: I want to
5 object, this ground has already been plowed.

6 THE COURT: Overruled.

7 I think he has a right to inquire for
8 purposes of exercising a preemptory strike.

9 MR. OLD: You are concerned
10 about some business matters of yours?

11 THE POTENTIAL JUROR: Yes,
12 sir. I am.

13 Q (BY MR. OLD) And you are preoccupied with
14 those things?

15 A Naturally.

16 Q They are on your mind all the time?

17 A Certainly.

18 Q All right. And they are of great significance
19 to you?

20 A Right.

21 Q If selected on a jury are those things still
22 going to be on your mind?

23 A I would try my darndest for them not to be.
24 I don't know.

25 I haven't been here before.

1 Q I mean --

2 A But I do know that this thing is too serious
3 for -- to let this enter into my mind. It would be hard
4 not to but I would have to do it.

5 Q I don't know if I am ridiculous I am
6 ridiculous, if you have a real estate transaction out you
7 are trying to get a contract on, have a good contract on
8 and you are sent down there and you are unable to attend
9 to that, not so much the money that you are going to make
10 from it, there's a large commission involved, is there
11 a great deal of satisfaction in making the sale or
12 handling the sale?

13 A True.

14 Q Do you think that could take away from your
15 attention, just being here and thinking about that or
16 trying not to think about that?

17 Do you think it could interfere with
18 your deliberations in this matter?

19 A I would hope not but again I have not been here
20 before.

21 Q Do you think it might?

22 A It's possible.

23 THE COURT: Five minutes.

24 MR. OLD: Your Honor, that's
25 all we have at this time.

1 THE COURT: Ma'am, if you will
2 return to the waiting room I will bring you back in a few
3 minutes or send someone with instructions.

4 We will probably not be able to tell you
5 today whether you are on the jury. We are going to talk
6 to several jurors and then sometime next week we will
7 start eliminating some jurors so it will be the end of
8 next week probably.

9 THE POTENTIAL JUROR: But do
10 I have to stay here?

11 THE COURT: For just a few
12 minutes and I will talk to the lawyers as to whether we
13 need to talk to you further.

14 THE BAILIFF: Please watch
15 your step, ma'am.

16 THE COURT: You are just about
17 finished, though.

18
19 (The following occurred outside the
20 presence and hearing of the potential juror:)

21
22 THE COURT: Does the State
23 have any challenges for cause?

24 MR. TOWNSEND: None, Your
25 Honor.

1 THE COURT: Does the Defense
2 have any?

3 MR. OLD: Yes, Your Honor, the
4 State would challenge for cause the juror Mary Edwards
5 in that she clearly stated that she would reject as
6 circumstances of mitigation age between the age of 18 and
7 80, that by stating she would reject that and not
8 consider it she disqualified herself as a juror in this
9 case for cause.

10 Additionally we challenge her for cause
11 on her testimony about the extent that her work beared
12 on her mind.

13 While economic excuse is not one that
14 a Judge may make for an economic excuse if the factors
15 surrounding that is anything else that would be on our
16 mind or her mind would effect her ability to sit as a
17 juror in this case it certainly is a challenge for cause.

18 It would be the same thing as putting
19 a person who is deaf on a jury, someone who is so
20 preoccupied in their mind with other things that they
21 cannot hear or there is a probability or possibility that
22 they will not.

23 THE COURT: Mr. Townsend?

24 MR. TOWNSEND: As to his last
25 challenge, Your Honor, taking her statement as a whole

1 she testified that she could do it, testified that she
2 would do her best to do it, he finally, after asking her
3 questions for ten minutes on that issue got her to say
4 she might possibly be distracted a little bit, she didn't
5 know.

6 That's the most -- closest to saying she
7 couldn't handle it.

8 As to the other objection, I'm not
9 certain that at this point how the question was phrased
10 to her but she basically said in my questioning she also
11 said in some of Mr. Old's questioning that she would
12 consider these issues.

13 I think her answer was that she would
14 not consider age in any way, I think it might have been
15 based on a misunderstanding, I think she was answering
16 in her opinion did she consider that to be mitigating
17 rather than would she consider it.

18 I think the word "consider" was in there
19 but I think her understanding and the way he asked the
20 question was "Would she consider it", well, you know
21 "Would she consider that mitigating", she has the right
22 to consider mitigating or not as long as she is willing
23 to consider all of it and then make up her mind.

24 And I think what she stated she would
25 do.

1 MR. LEE: The question was
2 that and that alone as mitigating circumstance is what
3 I understood.

4 THE COURT: I believe that
5 she was very clear that it is something that she does not
6 want to do, that if she does not work she won't get paid
7 and it will be on her mind but she also stated very
8 clearly that she was "rather hardheaded", I guess I'll
9 use that terminology, it wasn't her words, and the fact
10 that she was having to miss work would not influence her
11 decision.

12 So I'm going to overrule the challenge.

13 I also do not -- excuse me, that's the
14 second challenge -- I also do not believe that the first
15 challenge is valid.

16 I am overruling both challenges for
17 cause, Mr. Old.

18 Let's take a recess.

19
20 (Whereupon Court was recessed and at the
21 conclusion of which the following transpired:)

22
23 THE COURT: Let the record
24 reflect that there are no jurors present in the
25 courtroom.

1 Let the record further reflect that the
2 following Findings of Fact and Conclusions of Law are
3 being dictated into the record at the request of the
4 Defense Attorney, Mr. Bird Old, III.

5 I will state into the record my Findings
6 of Fact and Conclusions and then I will request this
7 Reporter transcribe same.

8 Finding of Fact are as follows:

9 1. There is no dispute over the
10 material facts.

11 2. The Defendant was arrested by the
12 Morris County Sheriff in South Dakota and returned to
13 Morris County, Texas.

14 3. The Miranda Warnings were given to
15 the Defendant in South Dakota and the Defendant requested
16 an attorney.

17 4. The Defendant was appointed an
18 attorney in June of 1993 when he was returned to Morris
19 County.

20 5. The Defense Attorney told the
21 Sheriff not to talk to the Defendant about the case
22 unless he, the attorney, was present.

23 6. Morris County has a small jail
24 population and it is the customary practice of the
25 Sheriff to talk to and counsel with inmates if they

1 request his help.

2 7. The Defendant and Sheriff had known
3 each other eight to 10 years.

4 8. The Defendant wrote a note or a
5 letter to the Sheriff in January of 194 requesting a
6 meeting with the Sheriff.

7 9. The meeting took place one week to
8 10 days after the request, the meeting lasted 45 minutes
9 to an hour and a quarter.

10 10. No Miranda Warnings were given
11 prior to the meeting.

12 11. The Defendant told the Sheriff that
13 he was having trouble sleeping, that he was having
14 nightmares and emotional problems.

15 12. The Sheriff is a religious person
16 and he discussed religion with the Defendant, the Sheriff
17 also said that it often helped him to write down his
18 problems and confront them. The Sheriff also said that
19 he, the Defendant, could lie to him but not to God. The
20 Sheriff further told the Defendant that people are saved
21 by asking God for forgiveness and that the truth would
22 set him free.

23 13. The Sheriff suggested that the
24 Defendant write out his problems and solutions and start
25 at a period of time prior to the date of the alleged

1 offense.

2 14. The Defendant testified, as did the
3 Sheriff, that the Sheriff told him not to discuss the
4 case with him and if he wrote out something he didn't
5 want seen he should destroy it, flush it down the toilet.

6 15. The Defendant testified that the
7 Sheriff never asked for a statement and never asked him
8 to send a statement to him.

9 16. The Defendant testified that he did
10 not know why he sent the letters to the Sheriff.

11 17. The Defendant sent several letters
12 and notes to the Sheriff.

13 18. The letters were received by the
14 Sheriff through in-house mail.

15 19. The Defendant was represented by
16 Attorney Solomon when the February letter was sent by
17 Attorney Old when the September letter was sent.

18 20. No meeting occurred between the
19 Defendant and the Sheriff before the September letter.

20 Conclusions of Law are as follows:

21 1. The February meeting between the
22 Sheriff and the Defendant was not a psychological ploy
23 to gain information for the State.

24 2. The meeting was not the functional
25 equivalent of an interrogation.

1 3. Both the February 28th letter and
2 the September letter amounts to a voluntary statement and
3 admission of guilt.

4 4. The Sheriff advised he did not
5 constitute entrapment.

6 5. The meeting between the Sheriff and
7 the Defendant was not a violation of the Sixth Amendment
8 Right to have counsel present during a confrontation
9 between the State and Defendant.

10 6. The Sheriff made no attempt to
11 elicit incriminating information during the meeting with
12 the Defendant.

13 7. The meeting was not a custodial
14 interview.

15 8. No promises nor rewards were offered
16 nor given to Defendant.

17 9. Both letters are admissable.

18 If either side requests additional
19 Findings of Fact or Conclusions of Law they may submit
20 them to the Court in writing.

21 MR. OLD: We request one
22 verbally at this time, Your Honor.

23 THE COURT: I would prefer to
24 sign the ones I have just dictated into the record, get
25 a copy to both sides, let you review them then if you

1 have a question then you may do so in writing.

2 MR. OLD: Thank you.

3 THE COURT: Are we ready? Is
4 the State ready? Defense ready?

5 MR. TOWNSEND: Yes, Your
6 Honor.

7 MR. OLD: Yes, Your Honor.

8 THE BAILIFF: Watch your step
9 there, you will be falling all over LLOYD there.

10 Have a seat right there.

11
12 J.D. REYNOLDS, Potential Juror #330,
13 was called as a Potential Juror and, having been
14 previously sworn by the Court, testified as follows:

15
16 THE COURT: How are you doing,
17 Mr. Reynolds?

18 THE POTENTIAL JUROR: Pretty
19 good.

20 THE COURT: For the record is
21 your name "J.D. Reynolds?"

22 THE POTENTIAL JUROR: Yes.
23 It is.

24 THE COURT: Mr. Reynolds, I'm
25 Gary Stephens, I'm presiding over jury selection in the

1 trial in this case.

2 We have two lawyers present representing
3 the State of Texas, we have the District Attorney from
4 Morris County, Mr. Richard Townsend and the attorney from
5 -- District Attorney from Cass County, Mr. Randall Lee.

6 There are two Defense Attorneys assigned
7 to this case, present in the courtroom is Mr. Bird Old,
8 III.

9 MR. OLD: How do you do, sir?

10 THE COURT: Next to him is the
11 Defendant, Mr. Billy Wardlow.

12 The other attorney, Lance Hinson, is not
13 present this afternoon.

14 Now, Mr. Reynolds, the lawyers have read
15 your questionnaire and they are familiar with your
16 answers. They are going to discuss those answers with
17 you and they are also going to talk to you about the
18 principles of law involved in a death penalty case.

19 You will be asked a lot of questions and
20 the answers will let us know whether or not to put you
21 on this jury.

22 In order to be a juror you must be able
23 to understand and follow the law, you don't necessarily
24 have to agree with the law but if you disagree with some
25 part of it, if you can set it aside you are still

1 qualified but if you disagree with the law so much and
2 to the extent that you can't follow the law you are not
3 qualified.

4 So we need to know what your opinions
5 are about some of our laws so we can decide whether or
6 not you are qualified.

7 We have also found over the years of
8 picking jurors in this type of case that just being
9 qualified does not necessarily mean that you are an
10 appropriate juror so we need to know more than whether
11 you could follow the law, we need to know how you think
12 and why you think so, we need to decide whether it is an
13 appropriate task or duty for you to be on the jury,
14 there are no right or wrong answers, there's no right
15 or wrong opinions, they are opinions, we frankly don't
16 care why they are your opinions and I don't mean to be
17 rude by that but we very much care what those opinions
18 are.

19 If you have questions during the process
20 stop us and let us know what is on your mind and we
21 will try to clear up and answer any questions that you
22 have.

23 Mr. Townsend.

24 MR. TOWNSEND: Thank you, Your
25 Honor.

VOIR DIRE EXAMINATION

BY MR. TOWNSEND

1
2
3
4 Q Mr. Reynolds, if I ask you any questions you
5 don't understand or mumble, I have mumbled or something,
6 be sure and let me know and I will restate that for you.

7 The State of Texas in this case is
8 actively seeking the death penalty and I'm not trying to
9 scare you or shake you up, I'm just trying to lay our
10 cards out here and that's what we are here for.

11 I have your questionnaire, I think I
12 have a good idea from that questionnaire what your
13 attitude about the death penalty is but if you could for
14 a moment just tell us how you feel about the death
15 penalty.

16 A I believe in it, I mean I believe that if the
17 crime called for it, you know, I don't -- I don't believe
18 we see enough of it nowadays, I think that's the reason
19 we have more crime going on in the United States than we
20 should have.

21 Q So you believe it appropriate in some cases?

22 A Yes, sir.

23 Q Mr. Reynolds, in Texas there are two kinds of
24 murder, I referred to the first kind as "plain murder"
25 or you might say non-capital murder, that's the type of

1 murder where someone was intentionally or knowingly
2 caused the death of another individual and that's without
3 any sort of legal justification or excuse like self
4 defense or accident or something like that, they have
5 just intentionally or knowingly caused someone's death.

6 If they have done that in Texas that's
7 punishable from anything from five years probation up to
8 99 years or life in the penitentiary.

9 And we have got another type murder
10 called "capital murder" and that's a murder like we just
11 talked about the plain murder plus some and that plus
12 something is a police officer has been murdered, a
13 fireman has been murdered while they are in the line of
14 duty, perhaps you have a murder done during the
15 commission of a robbery, done during the commission of
16 a burglary or rape but basically you are talking about
17 murder plus something else.

18 And those situations, those are called
19 what we call capital murder.

20 In this case what the State is alleging
21 is that a murder took place and also a robbery.

22 Can you see how that would fit under
23 capital murder rather than just regular murder because
24 we are alleging both a murder plus something else and
25 that being a robbery?

1 The type jurors we need, Mr. Reynolds,
2 are those people who can keep an open mind throughout the
3 trial until it's time at the end to make up their minds
4 as to guilt or innocence and not decide until they have
5 heard all the evidence whether the Defendant is guilty
6 or not guilty.

7 Do you believe you could do that?

8 A I think I could.

9 Q Another decision that comes along in capital
10 murder cases is that's the decision on punishment and
11 it's not like it may have been back in the old days where
12 the jury went back and they had already decided and found
13 the defendant guilty and then they went back and they
14 just said, well, you know, "How many of you want to give
15 the death penalty, how many of you want to give him a
16 life sentence", we don't do it that way anymore.

17 What we do in Texas now is that during
18 that --

19 MR. OLD: I want to object to
20 that. It's as always required a unanimous verdict, it
21 wasn't a matter of a simple vote.

22 THE COURT: Sustained.

23 Rephrase.

24 MR. TOWNSEND: The way it's
25 done in Texas now is that after a defendant is found

1 guilty then you go into the punishment phase of the
2 trial.

3 During that punishment phase you are
4 going to hear more evidence and it's not going to be
5 evidence about the guilt and innocence of the defendant
6 in that case because you have already made that decision,
7 it's going to be evidence such as maybe psychological
8 evidence or maybe the life history or the life history
9 of the defendant or something about his family background
10 or it may be evidence about his criminal history or his
11 history or incidents of bad acts by the defendant, it
12 could be just any number of different type things that
13 you might hear during that hearing.

14 And after you have heard all that
15 evidence then you will be called upon to decide two
16 Special Issues and your answer to those two Special
17 Issues or those two questions will determine whether the
18 defendant gets a life sentence or the death penalty.

19 And I have heard jurors in the past say,
20 "Well, okay. Now, I have already found him guilty of
21 capital murder and since I found him guilty of capital
22 murder I don't need to hear all this other stuff. I want
23 to give him the death penalty."

24 You see, now, they are not being -- they
25 are not maintaining and following the law because to

1 follow the law you have got to hear all that evidence in
2 the punishment phase before you make your decision.

3 Do you think you could do that?

4 THE POTENTIAL JUROR: I hope
5 that I could. I mean, you know, I kind of -- I can't
6 guarantee you I would. I think I could. I hope I could.

7 Q (BY MR. TOWNSEND) You believe you could do
8 that?

9 A I think I could.

10 Q Now, when you are deciding the death penalty,
11 life imprisonment you can certainly, can consider that
12 testimony that you heard during the guilt or innocence
13 phase, you don't have to forget that or block that out
14 of your mind, you can consider that also but you also
15 have to hear the evidence here during the punishment
16 part, can you give consideration to it?

17 A I believe I can.

18 Q The important thing to remember is that the
19 death penalty is not automatic or life imprisonment is
20 not automatic, you have got to head into this punishment
21 hearing and in order to be a fair and impartial juror you
22 have got to be able to give credence or give
23 consideration and listen to that punishment evidence
24 before making your mind up on these two Special Issues
25 or two questions that you are going to have to answer.

1 There is a sheet up there, Mr. Reynolds,
2 on the top it says "Special Issues", would you look at
3 that if you will, read that Special Issue #1 and read it
4 to yourself and then when you have finished with it we'll
5 talk about it.

6 A I am not -- I am not sure I understand all
7 this.

8 Q Let me tell you what it means to me and then
9 you can tell me if you agree or disagree or if you still
10 don't understand it; what it means to me basically is
11 that Special Issue #1 talks about is it probable that the
12 defendant would commit a criminal act of violence in the
13 future, does that kind of -- what it meant to you?

14 A Yeah. Somewhere thereabouts.

15 Q I think the key language in there is that word
16 "probability", what that means is that just like we have
17 to prove his guilt, we have also got to prove this
18 Special Issue #1 beyond a reasonable doubt, we have got
19 to prove to you beyond a reasonable doubt that it's
20 probable that he would commit a criminal act of violence
21 in the future that would constitute a continuing threat
22 to society.

23 Now, you are not required when you vote
24 to guarantee that he's going to or even predict whether
25 he will or not but just that we prove to you beyond a

1 reasonable doubt that it's probable.

2 And the other key words in there are
3 "criminal acts of violence."

4 Now, what the Defendant is on trial for
5 is capital murder but we are not required to prove to you
6 that it's probable that he would commit another capital
7 murder, it's just that it's probable that he will commit
8 some criminal act of violence whether it be assault,
9 rape, criminal act of murder or any other -- any number
10 of criminal acts of violence.

11 Do you believe that after hearing all
12 the evidence that you could answer that question after
13 you have heard all the evidence during the main part of
14 the trial and you have heard all the punishment evidence
15 could you make a decision and vote "Yes" or "No" on that
16 Special Issue?

17 A Well, I think I could but if a man -- I mean
18 if I feel like a man is found guilty of it, you know,
19 he's going to -- if he gets off I feel like a man would
20 do it again, commit a crime, he doesn't pay for it I feel
21 like he's going to commit another crime.

22 Q Mr. Reynolds, do you understand that when you
23 are considering your answer to Special Issue #1 it's
24 perfectly permissible for you to consider that evidence
25 you heard during the guilt or innocence stage, you can

1 certainly consider that but in order to be a fair and
2 impartial juror you have to also give consideration to
3 that evidence you heard during the punishment hearing,
4 could you consider, you know, let's just call it "both
5 sections of evidence", could you consider -- would you
6 consider both of those before making your decision on
7 Special Issue #1?

8 A Well, I think I would.

9 Q Okay. Certainly we are not asking you to
10 ignore that guilt or innocence stuff but you also have
11 to be able to fairly consider, you know, not just
12 automatically say, "Well, I found him guilty of
13 capital murder so automatically I'm going to say 'Yes',
14 on Number One."

15 Would you be able to not do that and
16 consider the other evidence before making your decision?

17 Whatever decision you make it's up to
18 you but you need to be able to consider it all before you
19 make your decision.

20 A I think any kind of -- I think I would consider
21 all of it, I think I would take deep thoughts on it
22 before I made my decision.

23 Q That's all we are asking you to do. We are not
24 asking you to ignore that first part of the trial or
25 anything like that, just not make your decision on that

1 Special Issue until you have heard everything.

2 A Yeah.

3 Q Then go back and make your decision.

4 Okay. If you will read Special Issue
5 #2 and read that to yourself then we will talk about it.

6 It's a bunch of legal mumbo-jumbo but
7 read it anyway.

8 MR. OLD: I object to it being
9 "legal mumbo-jumbo", it's the law of the State.

10 THE COURT: Sustained.

11 MR. TOWNSEND: Withdraw it.

12 MR. OLD: It's highly
13 prejudicial.

14 THE COURT: I need to see
15 Counsel in chambers for a minute.

16 Just take the witness, let the Sheriff
17 take you back to the waiting room for a moment, I need
18 to talk to the lawyers for a moment.

19 Why don't you all come back to the
20 Judge's Office?

21
22 (Recess.)

23
24 (The following occurred in the presence
25 and hearing of the potential juror:)

1 THE COURT: Sir, did you have
2 a chance to finish reading that statement?

3 THE POTENTIAL JUROR: Yes.
4 I did.

5 THE COURT: Mr. Townsend, you
6 may proceed.

7 MR. TOWNSEND: Okay. Mr.
8 Reynolds, you are kind of like I did on the first one,
9 let me -- I first -- kind of what this meant to me,
10 basically what you are looking at there is a person has
11 been found guilty of capital murder, you have already
12 made the decision and answered "Yes."

13 MR. OLD: I'm going to object
14 to him suggesting what it meant to him.

15 The question is what it means to the
16 juror.

17 THE COURT: Sustained.

18 MR. TOWNSEND: In order to
19 answer Special Issue #2 you would have had to answer
20 Special Issue #1 "Yes", if you answered "No" to Special
21 Issue #1 the defendant would automatically receive a life
22 sentence but if you answer "Yes" to Special Issue #1 then
23 you are going to go to Special Issue #2.

24 Two talks about receiving mitigating
25 circumstances that would reduce the defendant's moral

1 blameworthiness and basically, you know, after having
2 found a person guilty of capital murder, answered "Yes"
3 to Special Issue #1 then you see something in the case,
4 something you heard during the guilt or innocence or
5 something you heard during the punishment hearing that
6 makes you feel as if the defendant should receive a life
7 sentence rather than the death penalty.

8 And if you answer that question "Yes"
9 then the defendant would receive a life sentence because,
10 you know, basically that would that you did find
11 something there, whether it was, you know, it might be
12 any number of things but if you answer that question "No"
13 the defendant receives the death penalty.

14 My question is; after first having found
15 the defendant guilty of capital murder and after having
16 decided that the answer on the probability of future
17 dangerousness was "Yes" and that's the first question,
18 could you keep an open mind, go back and review all that
19 evidence during the punishment phase and during the
20 entire trial before deciding what your answer would be
21 on Special Issue #2?

22 THE POTENTIAL JUROR: Yeah.

23 I think I could.

24 Q (BY MR. TOWNSEND) Okay. Keeping in mind that
25 in Special Issue #2 you are going to be considering

1 things like the type evidence you heard during the
2 punishment hearing, it might be relative to the age of
3 the defendant, it might be related to the sort of family
4 history that was involved there, it might be related to
5 whether the defendant was intoxicated or not, it might
6 relate to educational background, prior criminal history
7 and, you know, you are not required by law to be a fair
8 and impartial juror to give a certain amount of weight
9 to any of that evidence or give any weight to it. You
10 might just think, "Why, that is not important", but you
11 are required to listen to the evidence and consider, for
12 instance the age of the defendant or the family history
13 of the defendant, consider all those things and then make
14 your decision.

15 Would you give those things
16 consideration prior to making your decision?

17 A Yes. I would.

18 Q Okay. Let me just talk to you about some
19 general areas of the law.

20 You know, if you found a person guilty
21 of murder and believe that the State had proved that
22 beyond a reasonable doubt but you didn't think that we
23 proved the -- let's say the robbery part of the charge
24 then of course the defendant then would be guilty of
25 murder but not capital murder.

1 Do you follow me?

2 A Yes.

3 Q Okay. In a murder case the range of punishment
4 is anywhere from five years probation up to 99 years or
5 life in the penitentiary.

6 In order to be a fair and impartial
7 juror in a murder case or capital murder you have got to
8 be able to consider that full range of punishment, five
9 years probation to 99 years or life.

10 Do you, as the Judge talked to you a
11 couple of weeks ago one of those things you look at is,
12 you know, what type murder was it? Was it an extremely
13 vicious one, was it a mercy killing or was it the type
14 situation where a person was extremely ill and in a lot
15 of pain, maybe their husband or wife killed them at their
16 request or was it an extremely vicious type murder.

17 The range of punishment is extremely
18 broad for those reasons.

19 Could you give consideration to the full
20 range of punishment, whether it be on one end or the
21 other?

22 A Yes. I could.

23 Q So you could consider 99 years and decide
24 whether that was appropriate or not, you could consider
25 five years probation and decide whether that was

1 appropriate or not?

2 A Yes.

3 Q Could you do that?

4 A I think I could.

5 Q Okay. The burden of proof in this case and any
6 criminal case is with the State of Texas, we have got to
7 prove to you beyond a reasonable doubt that the defendant
8 committed the crime, is that something you are familiar
9 with?

10 A Yeah.

11 Q Okay. In proving that what goes along with
12 that is that the defendant on the other hand doesn't have
13 to prove anything to you, it's entirely up to us, they
14 don't have to prove that the defendant is innocent, we
15 have got to prove that he's guilty.

16 Going along with that is what we always
17 refer to as the Fifth Amendment privilege and that is
18 basically the defendant has a right to testify if he
19 chooses to but he also has a right not to testify if he
20 chooses to and we have got to have the type jurors who
21 are going to decide this case based on the evidence that
22 is presented to them.

23 And I know it's kind of human nature to
24 say, you know, "I would like to hear what the defendant
25 says about this" or "If I was on trial I would want to

1 testify."

2 But we have got to have jurors who can
3 decide the case based strictly on the evidence that is
4 presented and not in any way decide the case just because
5 the defendant chose not to testify if that happened,
6 could you do that?

7 A Yeah.

8 Q And that's true also of the punishment phase
9 where you might have a tendency to think, "Well, I would
10 like for him to get up there and say he's sorry" but
11 still you have got to decide the facts of the punishment
12 hearing, you have got to decide those two special
13 questions or Special Issues based on the evidence that
14 you hear and not hold him or hold it against him in any
15 way if he chose not to testify at this punishment
16 hearing, could you do that?

17 A Yes.

18 Q In all criminal cases that go to trial, felony
19 criminal cases the State has already receive an
20 indictment from the Grand Jury and that indictment
21 basically is a charging instrument that gets the case to
22 trial but that is not evidence. You don't hear that in
23 the courtroom. That is just a piece of paper that gets
24 a trial going, basically.

25 Would you hold it against the defendant

1 in any way, the fact that he had been indicted because
2 that is not evidence, could you do that?

3 A Yeah.

4 Q In some criminal cases, Mr. Reynolds, the State
5 will introduce evidence of a written statement that has
6 been done by the defendant, not called a "confession",
7 if such a statement come in I believe the Judge will
8 instruct you that before considering that statement and
9 using it for your determination and considering it as
10 evidence you will have to determine -- let's assume you
11 think the statement is true, you also have to determine
12 that the statement was voluntarily -- that it was
13 voluntarily taken, that the person wasn't coerced or
14 directed in any way, would you do that? Would you be
15 able to if you decide the State has to prove that beyond
16 a reasonable doubt also, would you be able to put aside
17 if you decided that this statement was not voluntary
18 would you be able to not use that as evidence and decide
19 your verdict based on the evidence that was admissable
20 and that you had heard in the courtroom?

21 A Yes.

22 Q Mr. Reynolds, do you -- one of the attorneys
23 that is representing the Defendant in this case is not
24 here today, his name is "Lance Hinson", do you know him?

25 A I don't think so. I don't recall him.

1 Q Okay. The other attorney is Bird Old and he's
2 from Mount Pleasant, do you know him?

3 A Yeah.

4 Q Has he ever represented you or your family?

5 A No.

6 Q Has -- is there anything about your
7 acquaintance with him, do you consider him a friend or
8 just an acquaintance?

9 A I just know him.

10 Q Just kind of know who he is?

11 A Yes.

12 Q Anything about that that would cause you a
13 problem in serving on this jury?

14 A No.

15 Q Mr. Reynolds, I think somewhere in your
16 questionnaire you mentioned -- well, there was a
17 question, have a family member or friend -- excuse me
18 -- that's the wrong question -- the question is do you
19 know anyone that has been to prison or in prison and your
20 answer was "Yes" and you listed a name there.

21 Can you give me a little background
22 about that?

23 A Well, I got a cousin that has been in prison,
24 got out and I think he's back in jail again now.

25 Q Is that someone that is local here?

1 A Yeah. From here in Titus County.

2 Q Okay. Is he -- I don't know, I guess the best
3 way to ask it; do you think he pretty well deserved what
4 he got or do you think he got a raw deal or what?

5 A No. He probably deserved it.

6 Q Okay. Do you know any -- the Defendant in this
7 case, Billy Joe Wardlow is from Cason, Texas, do you
8 happen to know Mr. Wardlow or any of his relatives?

9 A Not that I know of.

10 Q The victim in this case was also from Cason,
11 his name is "Carl Cole", do you know him?

12 A No.

13 MR. TOWNSEND: Pass the juror,
14 Your Honor.

15 THE COURT: Mr. Old.

16
17 VOIR DIRE EXAMINATION

18 BY MR. OLD

19
20 Q Mr. Reynolds, you work for H.E. Spann &
21 Company?

22 A Yes, sir.

23 Q You worked there five years?

24 A This time. Yes.

25 Q "This time?"

1 You have been with them on and off?

2 A I have been with them off and on for 20 years.

3 Q What do you do for H.E. Spann & Company?

4 A A little bit of everything. I run a dozer and
5 lay the hot mix, everything.

6 Q Operate machinery, basically?

7 A Operator. Yes.

8 Q Other than working for Spann what else have you
9 done in the last 20 years?

10 A Well, I had my own business for five years.

11 Q What was that?

12 A East Texas Asphalt, I done driveways and septic
13 tank work and just a little bit of any kind of
14 construction work.

15 Q Have you worked for anyone else other than
16 yourself and Mr. Spann in the last 20 years?

17 A I worked for Pilgrim's about six months.

18 Q What did you do for them?

19 A Drove a truck.

20 Q Were you in the Armed Services?

21 A No.

22 Q Mr. Reynolds, on the first page of your
23 questionnaire it asks you some questions about your
24 dealings or opinions as to the death penalty, you
25 answered that you are in favor of the death penalty and

1 you were asked to explain that and if I understand you
2 correctly you -- if I understand you said "When called
3 for?"

4 A That's right.

5 Q And you further said that you believe that it
6 to be appropriate in some cases and you could return a
7 verdict in the proper case?

8 A Yes.

9 Q Okay. In answer to Mr. Townsend you made the
10 statement as to the death penalty that "We don't see
11 enough of it?"

12 A I don't believe we do see enough of it.

13 Q I'm not -- I'm not taking issue with you, I
14 just want to know what you mean by it and how you feel.

15 A I just feel like the death penalty is passed
16 over too many times.

17 Q Would you say you are a real prone death
18 penalty, you are for it?

19 A I don't know how I would say it, just some
20 cases deserve the death penalty that don't get it.

21 Q I take it from your statement that you have
22 seen or are aware through news or your own knowledge
23 cases to where you thought the result should have been
24 the death penalty and it was not?

25 A Well, not cases that I know personally but

1 cases that I have heard of and things.

2 Q Through the newspaper, television, radio or
3 whatever, articles?

4 A All of it.

5 Q Mr. Townsend was questioning you about Special
6 Issue #1 and you have that before you, what does that
7 question ask you as a juror to do?

8 A My opinion, it's asking if they was -- that we
9 found him guilty but yet released him would he commit
10 another crime.

11 Q Does it say anything in that question about
12 "releasing?"

13 A No. It doesn't say nothing about it.

14 Q You said in response to that question if I
15 understood you correctly, tell me if I am wrong about
16 what you said, that if you had found a man guilty of
17 capital murder that that fact alone would require you to
18 answer that question "Yes, that the defendant would
19 commit criminal acts of violence that would constitute
20 a continuing threat to society?"

21 A Yes. That pretty wells says that. Yes.

22 Q That fact alone would do it, I mean once that
23 -- once he had been convicted of capital murder there is
24 no other evidence that you would consider?

25 A I don't know exactly how I worded it, what

1 I -- what I mean to apply is if a man is found guilty and
2 he done deserves -- if he doesn't get the punishment he
3 deserves he probably will commit crime again.

4 Q Okay. Well, in answering Special Issue #1 and
5 the question is beyond a reasonable doubt you find a
6 probability that the defendant would commit criminal acts
7 of violence that would constitute a continuing threat to
8 society, once you have found that man guilty that proves
9 to you beyond a reasonable doubt that there is a
10 probability that he would commit criminal acts of
11 violence that would constitute a continuing threat to
12 society?

13 A I think so.

14 Q Okay. That alone would do it for you?

15 A I believe so.

16 Q And you would reject any other evidence as to
17 answer that question -- you would answer that question
18 "Yes" solely on the fact that you found him guilty of
19 capital murder?

20 A Yeah.

21 Q Okay.

22 THE COURT: Excuse me a
23 moment, Mr. Old.

24 Sir, the first part of the trial is
25 where you decide whether a person is or is not guilty and

1 the second part of the trial you decide his or her
2 punishment.

3 In a capital case you do it by answering
4 those questions.

5 It seems like what you are saying, you
6 don't need those questions, that if you find somebody
7 guilty of capital murder then you believe the appropriate
8 sentence is death.

9 Is that what you are saying?

10 THE POTENTIAL JUROR: No. No.
11 I am not really. I may be -- I may not be understanding
12 all of it.

13 What I'm saying is if a man is found
14 guilty of murder and if I believe it in my heart without
15 a reasonable doubt that he committed murder and if he's
16 not punished for that murder then he is capable or he
17 probably would commit other crimes.

18 THE COURT: The purpose of
19 that first question is to determine whether there will
20 be a death sentence or life sentence. If a person is
21 convicted of capital murder he will either get life or
22 death. If you find him guilty the best that can happen
23 is a life sentence, that is why we have those questions,
24 the questions will determine whether it's life or death.

25 So by saying that he wouldn't be a

1 threat doesn't say that he's going to be released, it
2 says that he gets a life sentence.

3 So if you find, "Yes, he will be a
4 danger", that's death, if you find that he wouldn't be
5 a danger then that is going to be a life sentence based
6 on those questions and you keep saying that you believe
7 a person is guilty and they don't get the appropriate
8 punishment then they would be a danger so I'm having
9 trouble understanding.

10 THE POTENTIAL JUROR: I'm
11 having trouble -- if he gets life imprisonment then how
12 would that be a threat to society?

13 THE COURT: It depends on your
14 definition of "society", our law says that "society"
15 means everybody everywhere including prison. You have
16 prison guards, you have prison family, you have visitors
17 that come to prison so that question is not asking you
18 whether or not he would be a danger on the street, it's
19 saying do you believe based on the evidence that you
20 heard that he will be a danger to society wherever that
21 society may be.

22 THE POTENTIAL JUROR: I guess
23 I was more or less misunderstanding the question. I mean
24 I believe like I said, I could find somebody guilty of
25 murder and I could also give a lesser sentence than the

1 death penalty if the circumstances called for it.

2 THE COURT: So just because
3 you found someone guilty of capital murder does not mean
4 that you automatically answer that question "Yes", is
5 that correct?

6 THE POTENTIAL JUROR: That's
7 right.

8 THE COURT: You will reexamine
9 the evidence and do it based on the evidence?

10 THE POTENTIAL JUROR: Yes,
11 sir.

12 THE COURT: Mr. Old.

13 MR. OLD: Mr. Reynolds, one
14 of the first questions that a juror will be asked by the
15 Court, I mean is whether or not you find beyond a
16 reasonable doubt that the defendant committed the crime
17 of capital murder.

18 Presume that you have answered that
19 question "Yes", now, in determining punishment the jury
20 does not directly say "We give him life, we give him
21 death."

22 As a matter of fact once you have found
23 him guilty of capital murder you have in effect given him
24 at least life, are you with me?

25 THE POTENTIAL JUROR: Yes.

1 Q (BY MR. OLD) Okay. Then you are asked some
2 questions and the Court bases the sentence of life or
3 death on the basis of those questions, the first question
4 is one we have been discussing and that is if you find
5 beyond a reasonable doubt there is a probability that the
6 Defendant would commit criminal acts of violence that
7 would constitute a continuing threat to society.

8 If you answer that "Yes" as you will be
9 told in the Court's instructions that results in a death
10 sentence subject to another answer.

11 Would you answer that question,
12 considering the facts -- consider the fact alone that you
13 found him guilty of capital murder, would that in itself
14 dictate to you that the answer to that question was "Yes,
15 I believe beyond a reasonable doubt there is a
16 probability that defendant will commit criminal acts of
17 violence that would constitute a continuing threat to
18 society?"

19 A No.

20 Q Okay. Just the fact you found him guilty alone
21 would not do it?

22 A No.

23 Q The next issue questions you as to sufficient
24 mitigating circumstances, you have read that issue,
25 haven't you?

1 A Yes.

2 Q Can you tell me the question that that's asking
3 you?

4 A It asks me just because we found someone guilty
5 but based on maybe his upbringing, maybe different
6 factors if we could find a different, I mean a lesser
7 punishment than the death penalty.

8 Q Did you note the definition of "mitigating
9 evidence" below the question?

10 "Mitigating evidence is evidence that
11 a juror might regard as reducing the defendant's moral
12 blameworthiness?"

13 A I read it. I'm not exactly -- exactly what it
14 means.

15 Q Do you have any idea what it means?

16 A Yeah. I don't know how to -- how really -- how
17 to say it. I feel like there are some people in the
18 world today that -- that have not been taught moral
19 values, they don't know moral values and I don't know how
20 I want to say this but I have known people that -- that
21 would think immorally but they have no conscience that
22 it was -- that it was wrong.

23 If that's what it asks that's what I am
24 getting from it.

25 Q You are saying what you would determine on that

1 question is whether or not someone possessed morals, is
2 that right?

3 A Yes.

4 Q And would evidence of a person's age be
5 mitigating evidence to you or would you reject it as not
6 being mitigating?

7 A No. I believe taken into consideration the age
8 would make a difference.

9 Q You would take into consideration age?

10 A Yes.

11 Q Would you take into consideration the
12 environment they have been raised in?

13 A Yes. I would.

14 Q Would you take into consideration the amount
15 of education that they had had?

16 A Probably. Maybe.

17 Q You wouldn't reject evidence of education?

18 A No.

19 Q Could you take into consideration the testimony
20 of a psychiatrist or a psychologist?

21 A Yeah. I would take it into consideration.

22 I say personally I don't believe in it
23 a whole lot but --

24 Q Let's talk about that, what is the
25 psychologist?

1 A Someone to me -- someone that tries to find out
2 stuff you don't know yourself, dig into your head and I
3 don't much believe it.

4 Q Would you have a hard time accepting opinions
5 of a man who claims to be a psychologist because you
6 don't believe in it?

7 A If that -- all -- if that was all I was basing
8 my evidence on I might would but I think it with the
9 other evidence I might hear, I think I might could.

10 Q Assume with me there was no other evidence than
11 the testimony of a witness who claimed to be a
12 psychologist or psychiatrist.

13 A I really don't know to tell you the truth.

14 Q You don't place much value in them?

15 A No. I don't.

16 Q Would it be fair to say you have a prejudice
17 as to them, that is you don't think much of them?

18 A That's right.

19 Q In comparing a psychiatrist's testimony against
20 another witness would I be at a disadvantage with you,
21 that is you don't think much of his profession?

22 A I am -- I'm afraid to say. It probably would
23 be.

24 THE COURT: Mr. Old, I think
25 you need to clarify whether it would be a fact or an

1 opinion witness.

2 MR. OLD: In comparing a
3 psychiatrist to his expressing opinions, that is he's
4 done this and this and read this and this and he's
5 interviewed so and so and my opinion, whatever, in
6 comparing his testimony to say a regular ordinary person
7 expressing an opinion, would the psychiatrist's testimony
8 be a disadvantage?

9 THE POTENTIAL JUROR: To me
10 everyone have an opinion.

11 Q (BY MR. OLD) Sir?

12 A To me everyone have an opinion.

13 Q "Everyone have an opinion?"

14 A And to me the psychologist's opinion even
15 though he's supposed to be a trained doctor, to me his
16 opinion wouldn't be to me no more stronger than some
17 else's opinion.

18 Q Then you would not consider his credentials,
19 that is his education and training in that particular
20 field?

21 A I think you are probably right.

22 Q You would reject it, you would not give -- if
23 proven to you that he held a degree in such and such and
24 so and so and had so many years experience in doing
25 certain things you would reject that testimony, you

1 would, it would not go to his credibility?

2 A I am afraid you are probably right.

3 Q In comparing his opinion testimony to a witness
4 just testifying to facts would the fact witness have a
5 head start and more credibility with you than the
6 psychiatrist?

7 A Yes.

8 Q Is it a fair statement that if you heard that
9 type of testimony from a psychiatrist that you could not
10 weigh that testimony equally with other testimony, it's
11 a disadvantage?

12 A If that -- I mean if that's the only testimony
13 I could -- I couldn't weigh it much with the one that had
14 the facts, if that's what you are asking.

15 Q Would it require evidence for me to remove from
16 your mind the opinion that you have of psychiatrists?

17 A I didn't really follow you there.

18 Q You do not place any credibility in
19 psychiatrists?

20 A No.

21 Q And that is you have -- you have a prejudice
22 or it is to say you don't like them?

23 A I've never known one.

24 Q I'm not talking about them personally, you
25 don't like this as a profession?

1 A That's right.

2 Q That in order for me to get you to consider
3 their testimony I would have to prove to you the accuracy
4 of their profession?

5 A Well, I don't know how you go about doing that
6 but --

7 Q I don't know either but I would have to prove
8 something to you to get you to consider, to start them
9 equally with another witness?

10 A I would probably think so.

11 Don't get me wrong, I'm not saying that
12 they are unlearned or ignorant or anything like that, I'm
13 just saying I don't put much confidence in one.

14 Q You have got a prejudice against them, no one
15 is criticizing you, we all have prejudices.

16 Mr. Reynolds, the term beyond a
17 reasonable doubt -- have you ever been on a jury before?

18 A Yes. I have.

19 Q What kind of case did you serve in?

20 A It was a jail break.

21 Q Was it here in this county?

22 A Yes. It was.

23 Q Do you recall the name of the defendant?

24 A No. I don't.

25 Q About how long ago was it?

1 A Probably 10 years, something like that.

2 Q Let me ask you another question about
3 witnesses; do you hold policemen, peace officers in high
4 esteem?

5 A Most of them.

6 Q Okay. For a law enforcement officer, if one
7 was called as a witness would he have a head start with
8 you as opposed to a non-peace officer witness?

9 A No. I don't think so.

10 Q You wouldn't be inclined to believe him anymore
11 than any witness?

12 A No. I don't believe I would.

13 Q Okay. But his testimony, if any, would be more
14 believable to you than that of a psychiatrist?

15 A Yes. It would.

16 Q Mr. Reynolds, there's a document in front of
17 you that is titled "Witness List." (Indicating)

18 A Okay.

19 Q Will you read that list and give me the names
20 of the people that you recognize, whether you know them
21 or know of them or have heard of them, just the first
22 page.

23 No, the whole thing.

24 Anybody on the first page that you knew?

25 A I don't know none of them. I have heard of two

1 of them.

2 Q Who have you heard of?

3 A The Morris County, Ricky Blackburn and to be
4 honest I think that was on account of all the posters I
5 seen when he was running for Sheriff but I'm not for
6 sure.

7 And then Dewayne McClung, Pittsburg, and
8 I just heard of him, you know, I don't know him.

9 Q Let's talk about any of your knowledge of them
10 that would effect your view of their testimony, if they
11 testified would they have more credibility with you?

12 A I know neither one of them.

13 Q They are just familiar names to you?

14 A Just familiar names.

15 Q Would you go to the second page?

16 A I don't think I know any of them -- "Ragsdale",
17 I know a bunch of "Ragsdales" down -- down in
18 Daingerfield but I don't know him I don't think.

19 Q Anybody else on the second page?

20 A No.

21 Q The third page?

22 A I don't know none of that.

23 Q How many years ago was it that you were on a
24 jury in the jail break case?

25 A Somewhere around 10 years.

1 Q Do you recall the Court giving you a charge or
2 written instrument after the case -- after the evidence
3 was over?

4 A They told us -- well, they told us what -- he
5 told us it could go no less than two, no more than 10.

6 Q But you had some written instructions that you
7 carried into the jury room with you that the Judge gave
8 you?

9 A I don't remember to tell you the truth.

10 Q Do you remember the words "reasonable doubt,
11 beyond a reasonable doubt?"

12 A Yeah. I remember all that. Yeah.

13 But if I was saying this, he wasn't
14 pleading not guilty, this jail break, they was just
15 trying to determine -- actually his lawyer give a
16 defense, it was so easy for him to get out they ought not
17 to do anything to him.

18 Q Did he plead guilty or not guilty?

19 A He plead not guilty but not to jail break, he
20 said he went out, you know, he followed -- two others
21 broke out and he followed them out.

22 Q Okay. There is a page before you that is
23 marked "SVDX 6." (Indicating)

24 A All right.

25 Q I will ask you to go to the second paragraph

1 on that page and be sure we are in the same place, read
2 me the first line.

3 A "The prosecution has the burden of proving the
4 defendant?"

5 Q Yeah. Will you read from there to the bottom
6 of the page to me -- to yourself?

7 A Okay.

8 Q That is an instruction that the Court will give
9 you in writing in his charge and that is the legal
10 definition of "reasonable doubt."

11 Do you have a definition of your own or
12 of reasonable doubt different from that definition?

13 A No. It's pretty close, it goes back to what
14 you consider a reasonable doubt, you know, what reason
15 or what unreason but it's pretty close to what my
16 definition would be.

17 Q You are not offended by that definition?

18 A No.

19 Q And you could follow it in place of your own
20 definition if the Court instructed you to?

21 A I think I could.

22 Q That is something that a juror is required to
23 do, when a word has special meaning in law the Court
24 tells it what a word means and whether you agree with it
25 or not you have got to follow that.

1 A Yes.

2 Q And you can do that as to that word?

3 A I think I can.

4 Q In the trial of a murder case it's possible
5 that the State may offer a document which is a statement
6 of a -- a written statement of the defendant and they may
7 be offering his written statement as evidence.

8 The law requires the jury not only to
9 believe the statement but it requires the jury before
10 they consider the statement as evidence to make a
11 determination beyond a reasonable doubt whether or not
12 it is a voluntary statement.

13 Basically for a statement to be
14 voluntary certain things must have occurred and there are
15 some things that cannot occur.

16 For instance, for a statement to be
17 voluntary it may be that the Court will instruct you that
18 prior to the statement being made was the person given
19 their Miranda Rights and that being the right not to give
20 evidence against themselves and to an attorney and we hear
21 them on television everyday, I presume that you are
22 familiar with it?

23 A Yes.

24 Q It may also tell you that other definitions or
25 requirements that the law says makes a statement

1 voluntary or involuntary, that again is a special legal
2 instruction, the word -- the word "voluntariness" of that
3 statement is confined to what the Court tells you to
4 consider and how to do it. And you shall not consider
5 the statement if you find it to be involuntary.

6 Now, even if you were totally convinced
7 that -- and it was undisputed that the defendant wrote
8 the statement, maybe even signed the statement, could you
9 find it involuntary if it did not meet the requirements
10 of the law?

11 A I'm not sure I understood it all completely but
12 I think --

13 Q Let's say -- you ask me a question if you want
14 to.

15 A If the Judge -- I mean if the Court orders me
16 to base something on say this is evidence, one part is
17 evidence and not the other -- well, let's back up and say
18 this; I don't agree with lots of things and after all the
19 jail break he came out there and told us that the man was
20 in jail for rape but now you can't use -- you have got
21 to put this plum out of your mind.

22 Q Yes.

23 A I didn't see the point them -- in doing it, we
24 didn't even know -- to know what he was in jail for, were
25 going to consider the jail break -- I'm not sure -- well,

1 I'm not sure exactly what you are asking or what you --

2 Q Let me ask you a question; in the written
3 instructions in this case it said that the defendant was
4 in jail for rape and while in jail for rape he escaped
5 but you are not to consider as evidence the fact or let
6 the fact he was in jail for rape influence your verdict?

7 A Yes.

8 Q Okay. Was that hard to do?

9 A It was hard to do.

10 Q Now, I'm asking you about the same thing about
11 an alleged statement and the question is not whether it's
12 to prove, not whether the defendant wrote the statement
13 but the Court will tell you a statement is voluntary if
14 you find that -- wait a minute -- if you find certain
15 things to be true that -- and the Miranda Warnings were
16 given, that it was not a result of coercion, that that
17 statement was the result of custodial interrogation or
18 the equivalent of custodial interrogation.

19 Now, I mean it tells you what you have
20 to find, find whether or not it's voluntary, that is
21 whether it's admissable.

22 Now, the issue there is not whether the
23 statement is true or not, okay, you go through and you
24 find that the statement is not voluntary, you find that
25 they forgot to tell him that he had the right for a

1 lawyer, that alone, you say, no, it's not voluntary.

2 You have already read the statement, it
3 has been read to you, it's in the jury room with you, you
4 believe the statement to be true whether voluntary or
5 not.

6 Can you set that aside and not consider
7 it?

8 I understand you are going to try to
9 follow the instructions of the Court, is that something
10 that you can discipline your mind to do?

11 A I think I can.

12 Q You think you can?

13 A I think I can.

14 Q And in your thinking are you thinking that you
15 believe beyond a reasonable doubt every word written on
16 that piece of paper is true -- I want you to think -- you
17 may have beyond a reasonable doubt every -- every word
18 on that piece of paper is true, it says the defendant did
19 it, okay, but you find they forgot to inform him he had
20 the right to have an attorney during questioning; can you
21 totally reject that statement and not consider it as
22 evidence?

23 A Yeah. I hope I can.

24 That would be what the Court would be
25 telling and I hope that I could follow it and I think I

1 probably could.

2 Q You think you could?

3 A Yes.

4 I ain't going to give you no guarantees
5 here but my opinion, I think I could.

6 Q Do you think it would be a difficult thing to
7 do?

8 A It would be hard.

9 Q You don't think that your belief about that
10 statement being true would influence your verdict?

11 A I don't think it would.

12 Q Mr. Reynolds, I'm not implying that you would
13 intentionally do anything wrong.

14 A I understand that.

15 Same deal on that jail break and they
16 told me about rape, it was hard to keep from thinking
17 about that but I do think I based my belief on the
18 evidence I heard and not -- not the rape.

19 Q But you all found him guilty, I presume?

20 A Yes. We did.

21 Q Let me -- we have got a little different
22 question in that case and this case; in that particular
23 case he had just been charged with rape, he hadn't been
24 convicted?

25 A That's right.

1 Q I mean that's just kind of like this man has
2 been charged with capital murder but I mean he's clothed
3 in the presumption of innocence and he's innocent until
4 proven guilty?

5 A I believe that.

6 Q Okay. Now, you were -- you had a hard time
7 laying aside what he was accused of in your jail break
8 case, now, this is a different situation, it's not a
9 matter of being accused of something, you are looking at
10 a confession, you believe it to be true but yet you don't
11 believe it to be voluntary.

12 Can you not consider the statement in
13 reaching your verdict?

14 A I think I could if I believed it not to be
15 voluntary.

16 Q You think you can distinguish between the two?

17 A I think so.

18 Q Let me ask you something, the fact that you
19 believe the statement true, would that be evidence that
20 would effect your finding as to whether it was voluntary
21 or not?

22 A I don't know to tell you the truth. I'm going
23 to be honest.

24 Q I believe you are giving me honest answers, I
25 want you if you can think about it and tell me whether

1 or not the fact you believe the statement is going to
2 effect your finding on the voluntariness of the
3 statement?

4 A I don't know how would you -- would -- I mean
5 if I honestly believe that the statement was true, you
6 know, it would be hard to just more or less disregard it
7 and put it out of my mind, not even use it -- I mean if
8 I be -- well, I don't know what I'm trying to say.

9 There ain't no guarantees here but I
10 think I could if I looked at it and I believed it was
11 -- wait -- I mean if I believed it was true, the
12 statement was true, the same as the letter, if I believe
13 this here is right but yet it wasn't voluntarily wrote
14 -- I don't know positive but I believe I could, might
15 could go with what the Court ordered me.

16 Q Okay.

17 A You done got me confused here.

18 Q I'm not trying to confuse you.

19 A I understand that.

20 Q Could you even lay that information aside in
21 determining other testimony?

22 Let's say another witness got up and
23 testified as to the same thing that was is in the
24 statement, would the fact that you knew the statement
25 existed, was involuntary, would the fact that this

1 witness's testimony matched the statement, would you be
2 considering the statement to support your credibility of
3 that witness?

4 A I don't know. But, you know, that's where it
5 comes in a reasonable doubt, each one got their thinking
6 of what, you know, of what their mind is on this here and
7 on where does the reasonable come in, the reasonable --
8 I mean if I believe this or if I heard and then I heard
9 another witness say the same thing it would have to
10 effect you.

11 Q Okay. You made a question there about
12 "reasonable doubt?"

13 A Yes.

14 Q "Reasonable doubt" is on that page.

15 A But what I'm saying, my reason and someone
16 else's reason may differ.

17 Q What you are saying, you could not help from
18 comparing the statement to the testimony and --

19 A I'm saying that's a possibility that I may not
20 have to, like I say, I ain't go no guarantees.

21 Q Okay.

22 A I don't know if I am answering the question the
23 way I should.

24 Q Mr. Reynolds, I know that you are going to try
25 to follow the law, my question is in this case can you

1 tell me that you can?

2 A I would say I think I can.

3 Q You think you can?

4 THE COURT: Eight minutes.

5 MR. OLD: Thank you, Your
6 Honor.

7 Are you unsure as to whether you an or
8 not?

9 THE POTENTIAL JUROR: I have
10 a doubt in my mind if that's what you are asking.

11 Q (BY MR. OLD) What you are telling me, you
12 would try your best but you really doubt that you could
13 totally do it?

14 A I'm saying I don't really know whether I could.

15 Q But you doubt it?

16 A I know it's -- it's a doubt that I could jump
17 up and hit this light there but, you know, it ain't no
18 guarantee, I don't know. I think I could but --
19 (Indicating)

20 Q What church do you belong to?

21 A Old Union and Missionary Baptist.

22 Q You have lived in the Cookville area most of
23 your life?

24 A Around Old Union, about halfway between Mount
25 Pleasant and Cookville.

1 Q Have you heard anything about this case?

2 A I have heard a little.

3 Q Well, have you heard people say what happened
4 or what they think happened?

5 A I heard one thing about -- well, I worked with
6 a man from Cason.

7 Q Who is that?

8 A I don't know his whole name, called him
9 "Gholston" but I'm not sure.

10 Q I know Mr. Gholston.

11 He told you what happened or --

12 A He told me what he heard.

13 Q What had he heard?

14 A He heard that the woman that was involved was
15 having an affair with the man that was -- she knew where
16 the money was at.

17 Q Okay. And did he tell you about how the
18 killing, if any, happened?

19 A No.

20 Q Would the fact that you have heard from some
21 source facts about the case --

22 A No. He told me he heard it himself.

23 Q Would it require evidence to remove that belief
24 from your mind if you have a belief?

25 A Well, he told me -- I heard it but I mean that

1 don't mean I believe it, it's just that I heard it.

2 Q Would you totally lay that aside and not even
3 consider it?

4 A Yeah. Yeah.

5 Q I mean it would not have to be something that
6 had to be disproved to you?

7 A No.

8 Q Your statement that -- as to the death penalty,
9 "We do not see enough of it" and your belief behind that
10 in answering the Special Issues in this case or answering
11 the questions that you are going to be asked in this
12 case, is that belief of yours that "We do not see enough
13 of the death penalty" going to effect your answers?

14 A I don't think so.

15 And if I may rephrase that statement,
16 it's not "We don't see enough of the death penalty" but
17 "We don't see enough punishment for crimes", not
18 necessarily just the death penalty. I mean I think
19 sometimes the death penalty should be used more but all
20 punishment needs to be used more.

21 Q Now, in considering -- back in the Special
22 Issue #2, in considering mitigating circumstances or the
23 first Special Issue as to the propensity to commit acts
24 of violence; would the fact that the person was being
25 tried, the fact that it was proved to you that he

1 committed other criminal acts or had a conviction or
2 something else, would that be evidence that you would
3 consider in answering both those questions?

4 A I think I would probably consider it.

5 Q Would it go to the issue -- to question one and
6 as to question two or just one of the questions?

7 A I am not -- I am not following you.

8 Q Question one is the question that asks you if
9 beyond a reasonable doubt if there is a probability that
10 the defendant would commit criminal acts of violence that
11 would constitute a continuing threat to society.

12 A Yeah. If he have -- I mean if he have always
13 been in trouble or had a problem, I mean you would have
14 to consider that, you know.

15 Q All right. Would it -- also we talked about
16 mitigating evidence and as defined on the exhibit you are
17 given, "Mitigating evidence is evidence that a juror
18 might regard as reducing the defendant's moral
19 blameworthiness", is that something that you would
20 consider, his prior criminal record or acts in answering
21 that question?

22 A Yeah. I would consider it.

23 Q Let me go back for one question one more time;
24 you were talking about being on the jury for escape and
25 the fact that you knew the man was charged with rape, can

1 you tell me with any certainty that this did not -- the
2 fact that you knew, that did not effect your verdict in
3 that case?

4 A It didn't effect my verdict.

5 What I was saying was that -- that was
6 some of the disagreement I have with the law. I do not
7 believe that they had a right to even tell us what he was
8 in jail for.

9 Q In other words, your argument was with the law
10 and you really felt like it would be fair if it just said
11 that he was in jail and escaped?

12 A That's right.

13 Q You do not think that was fair to the defendant
14 to put in what he was in jail for?

15 A No.

16 MR. OLD: Your Honor, we stop
17 at this time.

18 THE COURT: Sir, I would like
19 for you to go back to the waiting room for a moment then
20 I will probably bring you back out in a minute for some
21 more questions.

22
23 (The following occurred outside the
24 presence and hearing of the potential juror:)
25

1 THE COURT: All right. On the
2 record.

3 Does the State have any challenges for
4 cause?

5 MR. TOWNSEND: None, Your
6 Honor.

7 THE COURT: Does the Defense
8 have any challenges?

9 MR. OLD: The Defense would
10 challenge the witness for cause as to his prejudice as
11 to medical or psychiatric or psychological testimony
12 opinion, he testified that they would not be considered
13 equal with other opinions or with fact witnesses or as
14 fact witnesses and he would reject their testimony as to
15 their opinions regardless of how many degrees you proved
16 they had or their credentials and experience.

17 THE COURT: I don't see where
18 that is a challenge for cause, Mr. Old.

19 I have been looking through the Code,
20 that's not a bias or prejudice against any phase of the
21 law.

22 MR. OLD: Well, Your Honor,
23 the law allows for the admission of that type testimony
24 and I think that is a prejudice against something that
25 the defendant is allowed to prove which is the law and

1 I realize it's not the bold letter law but it's the law
2 of evidence, it's a prejudice against the law of
3 evidence.

4 THE COURT: Do you have any
5 other challenges?

6 MR. OLD: Your Honor, as to
7 being able to follow the instructions of the Court as to
8 the issue of the confession being voluntary and the
9 effect of the instruction if found not voluntary, the
10 witness expressed doubt and concern to the extent of
11 whether he could follow those instructions and not lay
12 that evidence aside if found to be voluntary and he has
13 -- involuntary -- and he has by his answer expressed an
14 admission that he probably could not follow the law in
15 that particular situation.

16 THE COURT: Do you have any
17 other challenges?

18 MR. OLD: That's all my
19 challenges.

20 THE COURT: Bring out Mr.
21 Reynolds for a moment.

22 While we are waiting for Mr. Reynolds,
23 I don't think we are going to get to the next guy, we
24 might as well as excuse him until tomorrow morning.

1 (Off the record discussion.)

2
3 THE COURT: Bring him back.

4
5 (The following occurred in the presence
6 and hearing of the potential juror:)

7
8 THE COURT: Mr. Reynolds, it
9 is my turn, I have got a couple of questions for you.

10 Before I ask you these questions I need
11 to explain something to you, in order for me to determine
12 whether or not a juror is qualified or not under the law
13 I have got to get that juror committed to a certain
14 position and a lot of what you said was "I think" or
15 "Maybe" or "I don't know."

16 And that's not enough, I'm going to have
17 to talk to you and get a commitment from you "Yes" or
18 "No", let's talk about this psychological testimony; you
19 told me that you just don't particularly believe in
20 psychologists or psychiatrists but you indicated also you
21 would listen to whatever they had to say and you would
22 evaluate it with anything else you heard, is that correct
23 or not?

24 THE POTENTIAL JUROR: That's
25 right.

1 THE COURT: Would you just
2 totally disregard anything a psychiatrist said because
3 he's a psychiatrist or would you listen to it?

4 THE POTENTIAL JUROR: No. I
5 would listen to it. I just don't put much confidence in
6 it, the same way with a chiropractor, I don't put much
7 confidence in a chiropractor.

8 THE COURT: If you listened
9 and believed it could you act upon it?

10 THE POTENTIAL JUROR: I might
11 could. I'm not saying I would totally disregard but I
12 don't know if I could use just that part -- I mean that
13 evidence to persuade me one way or another.

14 THE COURT: You would simply
15 give it some -- if you believed it you could act on it
16 and if you didn't believe it you wouldn't and you are
17 telling me it might be hard for you to believe what a
18 psychologist says?

19 THE POTENTIAL JUROR: Yeah.
20 Exactly.

21 THE COURT: Does it matter
22 whether it's a psychologist for the State or Defense?

23 THE POTENTIAL JUROR: Either
24 way.

25 THE COURT: We talked about

1 the difference between the psychologist or psychiatrist
2 giving an opinion and testifying to a fact, a fact is
3 where I testify that I saw somebody go out the door or
4 I saw someone -- somebody run a red light or I saw
5 somebody hit someone.

6 An opinion would be, let's take
7 "hitting", the opinion would be that I believe based upon
8 the fact that somebody was hit caused them internal pain,
9 that's an opinion because I don't know whether it did or
10 didn't.

11 And you indicated that you just wouldn't
12 believe a psychologist or psychiatrist as much as you
13 might some other witness.

14 Now, are you talking about as a fact
15 witness or an opinion witness?

16 In other words, if a psychologist said
17 "I saw Joe go down the street and I saw him reach into
18 the window and take a vase", would you discount his
19 testimony because he's a psychologist?

20 THE POTENTIAL JUROR: No. If
21 it were a fact, if he had seen it, you know, I would
22 believe it like anyone else.

23 THE COURT: His opinions are
24 what you might not believe?

25 THE POTENTIAL JUROR: His

1 opinions.

2 THE COURT: Let's go to the
3 next thing that gives me a little concern and that is
4 talking about disregarding evidence; if a person makes
5 a statement and that statement is used in the trial
6 sometimes the jury, if there's any evidence the jury has
7 to decide whether it's voluntary or not voluntary, means
8 that the person understood his rights, he was given his
9 rights, there was no coercion, nobody forced him to do
10 it and he knew he had a right to a lawyer.

11 Now, one of the things that could make
12 a statement non-voluntary would be the fact that he
13 wasn't read his Miranda Rights and I'm sure you have
14 heard on TV shows, the cops have to tell you you have a
15 right to a lawyer, a right not to speak and if you do
16 anything said will be used against you so let's make an
17 assumption for a minute, you are in a murder trial --
18 let's get away from a murder, you are in a burglary
19 trial, someone supposedly broke into someone's house and
20 stole something, there aren't any fingerprints, there
21 aren't any eyewitnesses but the defendant wrote out a
22 confession saying, "Yes. I went over to the Smith's
23 house and I broke into that house, I knocked in the door,
24 I took his safe and left and nobody gave me permission
25 to do it."

1 That statement is read to the jury, you
2 don't have much other evidence, somebody says, "Yes. I
3 saw the defendant in the neighborhood" or "Yeah, you
4 know, he has been -- he has been hanging around that
5 house", but you don't have anybody that really saw him
6 come or go, you don't have any fingerprints but he
7 admitted he did it.

8 Now, let's assume then the Sheriff gets
9 up and testifies, "You know, I forgot to tell him that
10 he had a right to a lawyer and he didn't have a lawyer
11 when he gave that statement."

12 Now, you believe the statement, the
13 statement is absolutely true so far as you are
14 concerned and you believe that the Sheriff didn't give
15 him his rights because the Sheriff says he just flat
16 forgot.

17 That doesn't change the fact that the
18 statement says he broke into that house and stole but
19 what does change is the law says a jury can't use that
20 as evidence so I instruct you that you can't use that as
21 evidence.

22 Now, you don't have enough evidence to
23 convict him without that statement.

24 What are you going to do?

25 Can you set aside and find that person

1 not guilty knowing he has confessed?

2 THE POTENTIAL JUROR: To be
3 honest, I don't know.

4 THE COURT: You see, I'm going
5 to have to get a "Yes" or "No", that's why I gave you a
6 fact situation that was about as strong as I could.

7 That's all you have with the statement
8 and you have got enough to convict him, he's guilty,
9 without that statement you don't have enough to convict
10 him and you are going to have to cut him loose and let
11 him walk knowing that he robbed somebody's house or
12 burglarized a house.

13 Do you have the mental willpower to do
14 that?

15 I'm not taking issue with your position
16 one way or another, I have just got to know whether you
17 can do it or not.

18 THE POTENTIAL JUROR: Like I
19 say, I hope I could but I couldn't a hundred percent
20 guarantee you that, yeah, I could put it aside, I could
21 sit here and tell you and lie and say "I'll put it
22 aside."

23 I think I could but I'm not a hundred
24 percent.

25 THE COURT: You can't assure

1 me that you can?

2 THE POTENTIAL JUROR: I can't
3 assure you that, that I can't.

4 THE COURT: Thank you.

5 You may step down. Don't leave yet, I
6 will send the Sheriff back with some more instruction.

7 You didn't know you were going to be
8 here all day, did you?

9 THE POTENTIAL JUROR: No. I
10 sure didn't.

11
12 (The following occurred outside the
13 presence and hearing of the potential juror:)

14
15 THE COURT: I'm going to
16 sustain the challenge, he's dismissed for cause.

17 Okay. Let him know that he's no longer
18 a prospective juror.

19 Tell Me. Booth that he will need to be
20 here at 9:00 in the morning and we better start at 9:00
21 -- 9:00 is what we agreed on, 9:00 tomorrow?

22 MR. OLD: Yes.

23 THE COURT: Tell him he will
24 be first at 9:00 o'clock.

25

1

(Record closed for October 25th, 1994.)

2

3

(Whereupon Court was recessed until 9:00

4

a.m., October 26th, 1994.)

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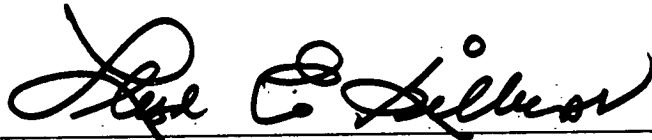
25

1 STATE OF TEXAS §
 2 COUNTY OF TITUS §

3
 4 I, Lloyd E. Billups, CSR #149 and
 5 Official Court Reporter in and for the 76th Judicial
 6 District, State of Texas, do hereby certify that the
 7 above and foregoing contains a true and correct
 8 transcription of the proceedings in the above-styled and
 9 numbered cause, all of which occurred in open court or
 10 in chambers on October 25, 1994 and were reported by me.

11 I further certify that this
 12 transcription of the record of the proceedings truly and
 13 correctly reflects the exhibits, if any, offered by the
 14 respective parties.

15 WITNESS MY HAND this 31ST day of
 16 January, 1995.

17 

18 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER
 19 76TH JUDICIAL DISTRICT, STATE OF TEXAS

1 Certification Number of Reporter: 149

2 Expiration Date of Certification: 12/31/96

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